

1960

# Probable Cause to Arrest and Admissibility of Evidence

Bonnie Lee Martin

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**PROBABLE CAUSE TO ARREST  
AND  
ADMISSIBILITY OF EVIDENCE**

*By*

**BONNIE LEE MARTIN**

Deputy Attorney General of the State of California

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## PREFACE

Following the decision in **People v. Cahan**, in April of 1955, California adopted as a judicially declared rule of evidence, that illegally obtained evidence would be inadmissible in a criminal proceeding.

There are only a few general statutes governing the laws of arrest which aid the court and police officers in determining whether a given arrest is lawful and a search and seizure of evidence proper. Thus it remained for judicial decisions to define and answer the problems which have arisen in this area.

Since our digest systems are never quite current and since to my knowledge, these cases have never been compiled and thoroughly indexed, it was felt that such a work as this was needed. The first printing of this syllabus was a compilation of cases following the **Cahan** decision through December 10, 1957. Since that time there have been significant changes and additional refinements in the law, particularly in regard to confidential informers. This revised edition includes the California cases relating to searches and seizures and probable cause to arrest through January 1, 1960, as well as those cases reported in the earlier edition.

BONNIE LEE MARTIN  
Deputy Attorney General

# TOPICAL INDEX

	Page
INTRODUCTION: The Exclusionary Rule .....	13
I. WHAT CONSTITUTES AN ARREST .....	15
II. LEGALITY OF ARREST .....	17
A. With a Warrant .....	17
B. Without a Warrant .....	19
1. By Peace Officers .....	19
2. By Private Persons .....	21
3. Offense Committed in Presence .....	23
C. Presumption of Legality of Arrest and Search .....	25
III. RIGHT TO QUESTION SUSPECTS OR WITNESSES .....	27
A. In General .....	27
B. Outdoors at Night .....	29
C. Precautionary Search .....	33
IV. WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY .....	35
A. General Definitions .....	35
1. Question of Law .....	37
2. Validity of Arrest Does Not Depend on Guilt .....	39
B. Factors Considered .....	41
1. Description of Person or Automobile .....	41
a. Sufficient .....	41
b. Insufficient .....	45
c. Mistaken Identity .....	47
2. At Night .....	49
3. Attempt to Escape .....	51
4. Furtive Actions .....	53
5. Refusal to Answer Questions, Evasive Answers, Etc. ....	55
6. Admissions .....	57
7. Criminal Record Known .....	59
8. Reputation of Premises Known .....	61
9. Crimes Recently Committed in Neighborhood .....	63
10. Arrestee in Company of Others Believed Felons .....	65
11. Arrests Involving Automobiles .....	67
a. Auto Accident .....	67
b. Traffic Violation .....	69
c. Odor of Alcohol .....	71
d. Unusual Conduct in Auto .....	73
12. Arrests Involving a Parolee .....	75
13. Narcotics .....	77
a. Information Regarding Possession or Sale of Narcotics .....	77
b. Officers Observe Exchange Taking Place .....	81
c. Arrestee Under the Influence of Narcotics .....	83
d. Other Police Observations .....	85
14. Bookmaking .....	89
15. Vagrancy .....	91
16. Burglary, Robbery and Theft .....	93
17. Drunkenness .....	97
18. Counterfeiting .....	99
19. Sex Offenses .....	101
C. Informer Cases .....	103
1. Reliable Information .....	103
a. Reliable Confidential Informant .....	103
b. Police Officers and Radio Broadcasts .....	109
c. Information From Ordinary Citizen .....	111
d. Informant Known to Police Officers .....	113
2. Anonymous Information .....	115
a. Alone .....	117
b. Corroborated .....	119
3. Revealing Identity of Informant .....	123
a. Information Is Sole Basis for Probable Cause .....	125
b. Informer Is a Participant or a Material Witness .....	127
c. Nondisclosure Not Prejudicial Error .....	131
d. Defendant Must Request That Identity of Informer Be Revealed .....	133
e. Name of Informant Unknown .....	135
f. Prosecution Need Not Produce Informant .....	137
g. Identity Need Not Be Revealed .....	139
D. Reasonable Cause to Search Vehicle .....	141
1. General Rule .....	141
a. Reasonable Cause to Believe Contraband Contained Therein .....	143

# TOPICAL INDEX—Continued

	Page
b. Distinction Between Homes and Automobiles .....	145
c. Impounded Vehicle .....	147
2. Traffic Violations and Automobile .....	149
3. Defendant Arrested Away From Vehicle .....	153
V. REASONABLENESS OF THE SEARCH .....	155
A. General Definition .....	155
1. Question of Law .....	155
B. Search as Incident to Lawful Arrest .....	157
1. May Be Before or After Arrest .....	159
2. Exploratory Searches .....	161
C. Need Not Procure Search Warrant .....	163
D. Consent .....	165
1. Substitute for Reasonable Cause or Search Warrant .....	165
2. Question of Fact and Burden of Proof .....	167
3. Consent by Defendant .....	169
4. Consent by Another .....	173
a. Person in Joint Possession .....	173
b. Apparent Authority .....	175
5. Voluntary Nature of Consent .....	177
a. Defendant in Custody .....	177
b. Implied Coercion .....	179
6. Search Cannot Go Beyond Scope of Consent .....	181
7. Search of Premises of Licensee .....	183
E. Privilege to Enter to Render Aid .....	185
F. What Constitutes a Search and Methods Used .....	187
1. Overhearing Conversation and Mechanical Listening Devices .....	187
2. Observing That Which Is Patent .....	189
3. Defendant's Person and Use of Force .....	191
G. Arrest and Search for One Crime Turns Up Evidence Bearing on a Dif- ferent Crime .....	193
H. Area of Search .....	195
1. Premises Under Control of Defendant .....	195
2. Defendant Arrested Away From His House .....	197
3. Open Fields and Woods .....	199
I. Duration of Search .....	201
J. Search Cannot Be Justified By What It Turns Up .....	203
VI. INFORMING ARRESTEE OF ARREST—PENAL CODE § 841 .....	205
A. General Rule .....	205
B. Where Arrestee Committing Crime .....	207
C. Where Arrestee Has Implied Knowledge .....	209
VII. REQUEST FOR ADMITTANCE AND FORCIBLE ENTRY— PENAL CODE § 844 .....	211
A. General Rule .....	211
B. Excuses for Failure to Comply .....	213
1. Unrelated to Securing Evidence .....	213
2. Necessity to Use Caution .....	215
3. Prevent Destruction of Evidence .....	217
VIII. DEFENDANT MAY RELY ON RIGHTS OF OTHERS .....	219
IX. STATEMENTS MADE DURING ILLEGAL DETENTION .....	221
X. TECHNICAL VIOLATIONS UNRELATED TO SECURING EVIDENCE .....	223
XI. TESTIMONY RELATING TO PROBABLE CAUSE IS NOT HEARSAY .....	225
A. Must Testify to Details of Information .....	227
XII. OBJECTIONS MUST BE MADE AT TRIAL TO RAISE ON APPEAL .....	229
A. Preliminary Motions In Advance of Trial .....	231
B. Writ of Prohibition to Review Ruling on Admissibility of Evidence .....	233
XIII. TESTIMONY RELATING TO EVIDENCE UNLAWFULLY SEIZED IS INADMISSIBLE .....	235
XIV. EVIDENCE SEIZED BY PRIVATE PERSON .....	237
XV. DISCOVERY .....	239
A. What May Be Discovered .....	239
1. Statements by Defendant .....	239
2. Statements by Witness .....	241
3. Names of Witnesses .....	243
4. Physical Evidence .....	245
B. Stage of Proceedings .....	247
1. Before Trial .....	247
2. During Trial .....	249
C. Foundation .....	251

# TABLE OF AUTHORITIES CITED

	Page
Agnello v. United States, 46 S. Ct. 4, 269 U.S. 20	195, 198
Allen v. McCoy, 135 Cal. App. 500	209
Amos v. United States, 41 S. Ct. 266, 255 U.S. 313	179
Arata v. Superior Court, 153 Cal. App. 2d 767	17
Badillo v. Superior Court, 46 Cal. 2d 269	25, 52, 231
Breithaupt v. Abram, 77 S. Ct. 408, 352 U.S. 434 (N.M.)	71, 172, 191
Brinegar v. United States, 69 S. Ct. 1302, 338 U.S. 160	141
Cash v. Superior Court, 53 A.C. 73	239, 247
Castiel v. Superior Court, 162 Cal. App. 2d 710	243
Cooley v. State Board of Funeral Directors and Embalmers, 141 Cal. App. 2d 293	183, 189
Cordry v. Superior Court, 161 Cal. App. 2d 267	239
Coverstone v. Davies, 38 Cal. 2d 315	19
Coy v. Superior Court, 51 Cal. 2d 471	133
De Losa v. Superior Court, 166 Cal. App. 2d 1	127, 134, 243
Dixon, In re, 41 Cal. 2d 756	99, 171
Fobbs v. City of Los Angeles, 154 Cal. App. 2d 464	19
Funk v. Superior Court, 52 A.C. 436	242, 247, 251
Gascon v. Superior Court, 169 Cal. App. 2d 356	52, 59, 87, 159
Gibson v. J. C. Penney, 165 Cal. App. 2d 640	37, 38
Gisske v. Sanders, 9 Cal. App. 13	29, 49, 63
Harris v. United States, 67 S. Ct. 1098, 331 U.S. 145	201
Hatjis v. Superior Court, 144 Cal. App. 2d 426	25, 79, 121
Hernandez v. Superior Court, 143 Cal. App. 2d 20	65, 86, 197
Hester v. United States, 44 S. Ct. 445, 265 U.S. 57	199
Johnson v. United States, 68 S. Ct. 367, 333 U.S. 10	179
Lorenzen v. Superior Court, 150 Cal. App. 2d 506	38, 105, 106, 133, 163
McAllister v. Superior Court, 165 Cal. App. 2d 297	221, 240
McCarthy v. Superior Court, 162 Cal. App. 2d 755	239
Mitchell v. Superior Court, 50 Cal. 2d 827	127, 131
Montgomery v. Superior Court, 146 Cal. App. 2d 622	35, 66a, 77, 109
Panzich v. United States, 285 Fed. 871	231
People v. Acosta, 142 Cal. App. 2d 59	78
People v. Adame, Cal. App. 2d 587	35, 37, 66a, 157
People v. Alaniz, 149 Cal. App. 2d 560	77, 106, 125, 197
People v. Alcalá, 169, Cal. App. 2d 468	119, 139, 157
People v. Alesi, 169, Cal. App. 2d 758	119, 139
People v. Alexander, 168 Cal. App. 2d 753	137
People v. Allen, 142 Cal. App. 2d 267	157, 163, 165, 221
People v. Alvarez, 154 Cal. App. 2d 694	127, 133
People v. Alvidrez, 158 Cal. App. 2d 299	133, 229
People v. Amado, 167 Cal. App. 2d 345	53, 120, 133
People v. Ambrose, 155 Cal. App. 2d 513	55, 64, 93, 176, 190
People v. Ames, 151 Cal. App. 2d 714	38, 101, 109
People v. Anders, 167 Cal. App. 2d 65	53, 69, 150
People v. Anderson, 145 Cal. App. 2d 201	89, 187
People v. Andrews, 153 Cal. App. 2d 333	106
People v. Arter, 169 Cal. App. 2d 439	104, 105, 230
People v. Ashcraft, 138 Cal. App. 2d 820	177
People v. Augustine, 152 Cal. App. 2d 264	54, 57, 78, 106
People v. Avas, 144 Cal. App. 2d 91	187
People v. Baker, 135 Cal. App. 2d 1	147, 150
People v. Baker, 170 Cal. App. 2d 240	105, 128
People v. Ball, 162 Cal. App. 2d 465	21, 157, 165
People v. Baltazar, 159 Cal. App. 2d 595	105
People v. Barnett, 156 Cal. App. 2d 803	103, 105, 217
People v. Bashor, 48 Cal. 2d 763	221
People v. Bates, 163 Cal. App. 2d 847	109, 118, 120
People v. Beard, 46 Cal. 2d 278	25, 207
People v. Berger, 44 Cal. 2d 459	231, 235
People v. Bernal, 174 A.C.A. 836	159
People v. Berve, 51 Cal. App. 2d 236	237
People v. Best, 172 A.C.A. 829	139
People v. Blankenship, 171 A.C.A. 64	229
People v. Blodgett, 46 Cal. 2d 114	30, 53, 69, 73, 149, 151, 157
People v. Bock Leung Chew, 142 Cal. App. 2d 400	13, 23, 25, 85, 159

# TABLE OF AUTHORITIES CITED—Continued

## CASES—Continued

	Page
People v. Borbon, 146 Cal. App. 2d 315	41, 109
People v. Bouchard, 161 Cal. App. 2d 302	33, 94, 159, 165, 170
People v. Boyd, 162 Cal. App. 2d 332	103, 105, 106, 172
People v. Boyd, 173 A.C.A. 597	66
People v. Boyles, 45 Cal. 2d 652	25, 39, 103, 159, 203, 223, 227
People v. Bradley, 152 Cal. App. 2d 527	23, 89, 119
People v. Brajevich, 174 A.C.A. 469	53, 143, 145
People v. Brite, 9 Cal. 2d 666	111
People v. Brittain, 149 Cal. App. 2d 201	33, 41, 66a, 229
People v. Brown, 147 Cal. App. 2d 352	35, 63, 81, 159
People v. Brown, 45 Cal. 2d 640	19, 87, 157, 203
People v. Burgess, 170 Cal. App. 2d 36	19, 21, 23, 39
People v. Burke, 47 Cal. 2d 45	165, 167, 227
People v. Cahan, 44 Cal. 2d 434	13, 87, 237
People v. Cahan, 141 Cal. App. 2d 891	165, 187
People v. Cahan, 150 Cal. App. 2d 786	89, 175
People v. Cahill, 163 Cal. App. 2d 15	23, 101, 187, 194
People v. Cannon, 148 Cal. App. 2d 163	78, 115, 120
People v. Cantley, 163 Cal. App. 2d 762	27, 42, 53, 149, 150, 190
People v. Carey, 171 A.C.A. 579	125
People v. Caritativo, 46 Cal. 2d 68	175, 191
People v. Carnes, 173 A.C.A. 625	35, 52, 95, 190
People v. Carswell, 51 Cal. 2d 602	211
People v. Carswell, 149 Cal. App. 2d 395	26
People v. Carter, 48 Cal. 2d 737	174
People v. Cartier, 51 Cal. 2d 590	242
People v. Cartier, 170 Cal. App. 2d 613	109
People v. Castiel, 153 Cal. App. 2d 653	127
People v. Chapman, 52 A.C. 94	241, 249, 251
People v. Chatman, 166 Cal. App. 2d 627	125
People v. Cherrie, 162 Cal. App. 2d 143	139, 170
People v. Cheng Wing Louie, 149 Cal. App. 2d 167	78, 119
People v. Cisneros, 166 Cal. App. 2d 100	52, 85, 195, 229
People v. Clemmons, 153 Cal. App. 2d 64	221
People v. Clifton, 169 Cal. App. 2d 617	23, 29, 35
People v. Coleman, 134 Cal. App. 2d 594	61, 81, 157, 163, 194
People v. Collier, 169 Cal. App. 2d 19	147, 181
People v. Colonna, 140 Cal. App. 2d 705	219
People v. Contreras, 154 Cal. App. 2d 321	75, 103
People v. Cox, 156 Cal. App. 2d 472	128, 129
People v. Crayton, 174 A.C.A. 239	139, 176
People v. Daily, 157 Cal. App. 2d 649	101, 111, 145, 153
People v. Daley, 172 A.C.A. 386	140, 229
People v. Dawson, 127 Cal. App. 2d 375	192
People v. Dean, 151 Cal. App. 2d 165	77, 103, 105
People v. Denne, 141 Cal. App. 2d 499	75
People v. Dewson, 150 Cal. App. 2d 119	26, 30, 35, 38, 45, 51, 78, 103, 107, 139, 149, 157
People v. Diaz, 174 A.C.A. 857	129, 134
People v. Diggs, 161 Cal. App. 2d 167	106
People v. Dillard, 168 Cal. App. 2d 158	176
People v. Dixon, 46 Cal. 2d 456	192, 229, 235
People v. Dominguez, 144 Cal. App. 2d 63	163, 174, 177
People v. Dore, 146 Cal. App. 2d 541	51, 151
People v. Duncan, 51 Cal. 2d 523	55, 91
People v. Dupee, 151 Cal. App. 2d 364	77, 105, 163
People v. Durazo, 52 A.C. 367	128
People v. Duroncelay, 48 Cal. 2d 766	67, 71, 151, 172, 191
People v. Easley, 148 Cal. App. 2d 565	39, 89, 115, 119, 189
People v. Edwards, 142 Cal. App. 2d 419	35, 51, 85
People v. Evans, 175 A.C.A. 304	29, 37, 97, 231
People v. Fabela, 175 A.C.A. 577	60, 66, 86, 140a
People v. Farrara, 46 Cal. 2d 265	25
People v. Faulkner, 166 Cal. App. 2d 446	139, 165, 167
People v. Felli, 156 Cal. App. 2d 123	94, 159
People v. Ferrera, 149 Cal. App. 2d 850	89, 119, 211
People v. Fields, 167 Cal. App. 2d 773	165, 167, 177
People v. Fischer, 49 Cal. 2d 442	89

# TABLE OF AUTHORITIES CITED—Continued

## CASES—Continued

	Page
People v. Follins, 173 A.C.A. 900	85
People v. Gale, 46 Cal. 2d 253	29, 143, 151, 219
People v. Gallardo, 41 Cal. 2d 57	251
People v. Galle, 153 Cal. App. 2d 88	175
People v. Garcia, 171 A.C.A. 818	140
People v. Garnett, 148 Cal. App. 2d 280	103, 104, 105, 177
People v. Glaze, 139 Cal. 154	251
People v. Goldberg, 152 Cal. App. 2d 562	187
People v. Gonzales, 20 Cal. 2d 165	13
People v. Gonzales, 136 Cal. App. 2d 437	129
People v. Gonzales, 141 Cal. App. 2d 604	103, 105, 125
People v. Goodo, 147 Cal. App. 2d 7	79, 117
People v. Gorg, 45 Cal. 2d 776	25, 155, 157, 165, 167, 175, 195
People v. Gorg, 157 Cal. App. 2d 515	59, 61, 77, 103, 106, 109, 133, 195, 203
People v. Grace, 166 Cal. App. 2d 68	221
People v. Graff, 144 Cal. App. 2d 199	89, 187
People v. Green, 152 Cal. App. 2d 886	61, 77
People v. Griffin, 162 Cal. App. 2d 712	167, 170, 181
People v. Guerrero, 149 Cal. App. 2d 133	105, 195, 217
People v. Gusukuna, 152 Cal. App. 2d 135	35, 89, 163
People v. Gutierrez, 171 A.C.A. 790	125
People v. Guy, 145 Cal. App. 2d 481	25, 118, 167, 170, 177, 195
People v. Hames, 173 A.C.A. 762	89, 90, 119
People v. Hanley, 156 Cal. App. 2d 544	67, 77, 120, 145, 149
People v. Harris, 146 Cal. App. 2d 142	31, 54, 65, 91, 121, 203
People v. Harvey, 156 Cal. App. 2d 516	31, 86, 110, 203
People v. Hazelip, 166 Cal. App. 2d 240	221
People v. Hen Chin, 145 Cal. App. 2d 583	85, 105, 189
People v. Herman, 163 Cal. App. 2d 821	13, 103, 106, 133, 173, 207
People v. Hickens, 165 Cal. App. 2d 364	147, 169, 181, 201
People v. Hickman, 143 Cal. App. 2d 79	35, 39, 65, 120
People v. Hicks, 165 Cal. App. 2d 548	139, 221
People v. Holguin, 145 Cal. App. 2d 520	25, 41, 104, 113, 120
People v. Holland, 148 Cal. App. 2d 933	83, 119, 171
People v. Hollins, 173 A.C.A. 110	59, 66a, 140
People v. Hood, 149 Cal. App. 2d 836	167, 169
People v. Hood, 150 Cal. App. 2d 197	35, 39, 66a, 75, 103, 104, 106, 109
People v. Houston, 164 Cal. App. 2d 396	171, 192
People v. Howard, 166 Cal. App. 2d 638	93, 173, 189
People v. Howard, 173 A.C.A. 903	104
People v. Hudak, 149 Cal. App. 2d 88	89, 119, 211
People v. Hupp, 61 Cal. App. 2d 447	37, 109
People v. Hyde, 51 Cal. 2d 152	229
People v. Ingle, 53 A.C. 408 (Calif. Supreme Court, Crim. 6564, Jan. 19, 1960)	13, 35, 37, 39, 65, 66a, 78, 159
People v. Ingle, 173 A.C.A. 670	19, 65
People v. Jablon, 153 Cal. App. 2d 456	194
People v. Jackson, 164 Cal. App. 2d 759	30, 157
People v. Jager, 145 Cal. App. 2d 792	111, 175, 187, 219, 229
People v. Jaquish, 170 Cal. App. 2d 376	25, 229
People v. Jaurequi, 142 Cal. App. 2d 555	29, 35, 37, 39, 59, 85, 171, 189, 207, 225
People v. Jennings, 142 Cal. App. 2d 160	25, 175
People v. Jiminez, 143 Cal. App. 2d 671	29, 53, 119, 193
People v. Johnson, 139 Cal. App. 2d 663	69, 83, 149
People v. Johnson, 153 Cal. App. 2d 870	237
People v. Johnson, 155 Cal. App. 2d 369	83
People v. Johnson, 157 Cal. App. 2d 555	42, 103, 105, 125, 133
People v. Justice, 167 Cal. App. 2d 616	131
People v. Kelsey, 140 Cal. App. 2d 722	25, 229
People v. Kilvington, 104 Cal. 86	35, 37, 49, 51
People v. King, 140 Cal. App. 2d 1	35, 89, 106, 215, 225
People v. King, 175 A.C.A. 415	169, 777
People v. Kitchens, 46 Cal. 2d 260	25, 47, 65, 79, 117, 229
People v. Kostal, 159 Cal. App. 2d 454	251
People v. Lawrence, 149 Cal. App. 2d 435	120, 127, 187, 195
People v. Lawton, 150 Cal. App. 2d 431	85, 120, 199
People v. Le Doux, 155 Cal. 535	13



# TABLE OF AUTHORITIES CITED—Continued

## CASES—Continued

	Page
People v. Lepur, 175 A.C.A. 851	17, 140a
People v. Lewis, 152 Cal. App. 2d 824	67, 71, 151, 172, 191
People v. Littlejohn, 148 Cal. App. 2d 786	41, 109, 193
People v. Lopez, 169 Cal. App. 2d 344	119, 140a
People v. Lujan, 141 Cal. App. 2d 143	141, 157, 177, 193
People v. Luna, 155 Cal. App. 2d 493	59, 78, 159
People v. Lundy, 151 Cal. App. 2d 244	133
People v. McCarty, 164 Cal. App. 2d 322	21, 223
People v. McFarran, 155 Cal. App. 2d 383	69, 150, 189, 194, 233
People v. McMurray, 171 A.C.A. 194	53, 123, 140
People v. McShann, 50 Cal. 2d 802	129, 187
People v. Mackenzie, 144 Cal. App. 2d 100	187
People v. Maddox, 46 Cal. 2d 301	25, 78, 120, 205, 211, 215, 229
People v. Malone, 173 A.C.A. 269	25, 37, 38, 157, 229
People v. Malotte, 46 Cal. 2d 59	165, 187
People v. Mann, 148 Cal. App. 2d 851	229
People v. Marquez, 160 Cal. App. 2d 362	127
People v. Martin, 45 Cal. 2d 755	27, 89, 159, 165, 171, 189, 213, 219
People v. Martin, 46 Cal. 2d 106	33, 51, 73, 149
People v. Martinez, 130 Cal. App. 2d 54	192
People v. Martinez, 169 Cal. App. 2d 242	78, 229
People v. Mast, 155 Cal. App. 2d 379	127
People v. Mateo, 171 A.C.A. 917	35, 155, 159
People v. Mayen, 188 Cal. 237	13
People v. Mays, 174 A.C.A. 505	137
People v. Melody, 164 Cal. App. 2d 728	131, 167, 170, 177
People v. Mendoza, 145 Cal. App. 2d 279	27, 61, 83, 157, 171
People v. Merino, 151 Cal. App. 2d 594	39, 77, 113, 163
People v. Michael, 45 Cal. 2d 751	27, 125, 165, 167, 171
People v. Miller, 143 Cal. App. 2d 558	89, 119, 211
People v. Mills, 148 Cal. App. 2d 392	161, 194, 235
People v. Misquez, 152 Cal. App. 2d 471	175
People v. Molarius, 146 Cal. App. 2d 129	59, 69, 149, 151, 157
People v. Montes, 146 Cal. App. 2d 530	81, 103, 106, 197, 199, 201
People v. Montez, 173 A.C.A. 303	133
People v. Moore, 140 Cal. App. 2d 870	35, 159, 189, 217
People v. Moore, 141 Cal. App. 2d 87	35, 115, 120, 153
People v. Moore, 154 Cal. App. 2d 43	103, 105, 125
People v. Morgan, 146 Cal. App. 2d 722	191, 194
People v. Morris, 157 Cal. App. 2d 81	25, 217
People v. Muniz, 172 A.C.A. 826	38, 157
People v. Murphy, 173 A.C.A. 412	30, 35, 37, 157, 189
People v. Nagle, 25 Cal. 2d 216	35
People v. Nelson, 171 A.C.A. 373	17
People v. Olson, 166 Cal. App. 2d 532	57, 170
People v. One 1949 Plymouth Sedan, 148 Cal. App. 2d 220	77, 120
People v. One 1956 Porsche Convertible, 175 A.C.A. 277	109, 143, 229
People v. Ortiz, 147 Cal. App. 2d 248	97, 147, 150, 193
People v. Paul, 147 Cal. App. 2d 609	37, 38, 49, 93, 111, 155
People v. Penson, 148 Cal. App. 2d 537	103, 106
People v. Pettyjohn, 172 A.C.A. 214	231
People v. Phillips, 163 Cal. App. 2d 541	17, 104, 139
People v. Poole, 174 A.C.A. 55	27, 53, 75, 192
People v. Potter, 144 Cal. App. 2d 350	215
People v. Preston, 160 Cal. App. 2d 545	106, 211
People v. Prewitt, 52 A.C. 342	25, 89, 104, 114, 135, 231, 232
People v. Ramsey, 157 Cal. App. 2d 178	101
People v. Richardson, 51 Cal. 2d 445	103, 110, 229
People v. Rios, 46 Cal. 2d 297	39, 57, 85, 205, 207, 209
People v. Riser, 47 Cal. 2d 566	249, 251
People v. Rixner, 157 Cal. App. 2d 387	35, 77, 103, 105
People v. Robarge, 151 Cal. App. 2d 660	75, 77, 113, 171
People v. Roberts, 47 Cal. 2d 374	157, 167, 176, 185, 189, 193
People v. Robinson, 149 Cal. App. 2d 342	167, 179
People v. Robinson, 166 Cal. App. 2d 416	123, 125, 230
People v. Rodriguez, 140 Cal. App. 2d 865	35, 63, 83, 159

# TABLE OF AUTHORITIES CITED—Continued

## CASES—Continued

	Page
People v. Rodriguez, 168 Cal. App. 2d 452	131
People v. Rodriguez, 175 A.C.A. 55	78, 138
People v. Rollins, 161 Cal. App. 2d 560	65, 105, 217
People v. Romero, 156 Cal. App. 2d 48	27, 42, 55, 94, 111, 205
People v. Ruiz, 146 Cal. App. 2d 630	81, 217
People v. Sakelaris, 154 Cal. App. 2d 244	89, 119
People v. Salcido, 154 Cal. App. 2d 520	77, 103, 125, 175
People v. Sanders, 46 Cal. 2d 247	59, 62, 87
People v. Sanson, 156 Cal. App. 2d 250	53, 69, 149
People v. Sayles, 140 Cal. App. 2d 657	59, 78, 114, 163, 217
People v. Schaumloffel, 53 A.C. 97	161, 194
People v. Schmoll, 48 N.E. 2d 933 (111)	181
People v. Schraier, 141 Cal. App. 2d 600	61, 203
People v. Sexton, 153 Cal. App. 2d 803	77, 103, 105
People v. Shannon, 147 Cal. App. 2d 300	49, 51, 93, 149, 229
People v. Shelton, 151 Cal. App. 2d 587	217
People v. Shepherd, 169 Cal. App. 2d 293	137
People v. Silberstein, 159 Cal. App. 2d Supp. 848	242
People v. Silva, 140 Cal. App. 2d 791	173, 219
People v. Silvestri, 150 Cal. App. 2d 114	26, 35, 37, 38
People v. Simon, 45 Cal. 2d 645	29, 33, 49, 65, 203
People v. Simpson, 170 Cal. App. 2d 524	91, 147
People v. Smith, 50 Cal. 2d 149	103, 192
People v. Smith, 141 Cal. App. 2d 399	35, 57, 159, 167
People v. Smith, 142 Cal. App. 2d 287	191
People v. Smith, 153 Cal. App. 2d 190	97, 194
People v. Smith, 166 Cal. App. 2d 302	140, 195
People v. Smith, 171 A.C.A. 616	26, 230
People v. Smith, 174 A.C.A. 149	137
People v. Smith, 175 A.C.A. 425	138
People v. Smyre, 164 Cal. App. 2d 218	101, 169, 190
People v. Soto, 144 Cal. App. 2d 294	35, 66, 78, 115, 120
People v. Spellings, 141 Cal. App. 2d 457	43, 52, 94, 111
People v. Spicer, 163 Cal. App. 2d 678	51, 85, 190, 229
People v. Steinberg, 148 Cal. App. 2d 855	89, 106, 217
People v. Stewart, 144 Cal. App. 2d 555	173, 201
People v. Stice, 161 Cal. App. 2d 610	221
People v. Tahtinen, 50 Cal. 2d 127	54, 86, 149
People v. Tarantino, 45 Cal. 2d 590	188, 237
People v. Taylor, 159 Cal. App. 2d 752	138
People v. Taylor, 174 A.C.A. 477	52, 53, 66
People v. Thomas, 156 Cal. App. 2d 117	42, 66, 106, 207
People v. Thornton, 161 Cal. App. 2d 718	17, 139
People v. Thymiakas, 140 Cal. App. 2d 940	115, 117, 118, 203, 227
People v. Torres, 158 Cal. App. 2d 213	167, 170
People v. Triche, 148 Cal. App. 2d 198	75, 109
People v. Underhill, 163 Cal. App. 2d 862	150
People v. Valenti, 49 Cal. 2d 199	13, 231, 233
People v. Valenzuela, 171 A.C.A. 362	209
People v. Van Randall, 140 Cal. App. 2d 771	25, 229
People v. Vaughn, 155 Cal. App. 2d 596	25, 42, 94, 221
People v. Velis, 172 A.C.A. 577	105, 198
People v. Vice, 147 Cal. App. 2d 269	105, 159
People v. Villarico, 140 Cal. App. 2d 233	43, 94
People v. Walker, 165 Cal. App. 2d 462	120
People v. Walters, 148 Cal. App. 2d 426	170
People v. Wasco, 153 Cal. App. 2d 485	195
People v. Washington, 163 Cal. App. 2d 833	30, 55, 59, 171
People v. Weathers, 162 Cal. App. 2d 545	105, 109
People v. West, 144 Cal. App. 2d 214	29, 49, 55, 63, 93, 171
People v. White, 159 Cal. App. 2d 586	42, 77, 103, 104, 105, 167, 169, 177
People v. White, 167 Cal. App. 2d 794	77, 140
People v. Wickliff, 144 Cal. App. 2d 207	59
People v. Wiley, 162 Cal. App. 2d 836	29, 37, 50, 52, 64

## TABLE OF AUTHORITIES CITED—Continued

CASES—Continued	Page
People v. Williams, 51 Cal. 2d 355	128
People v. Williams, 148 Cal. App. 2d 525	169, 229
People v. Williams, 169 Cal. App. 2d 400	95, 111
People v. Williams, 172 A.C.A. 419	25, 133
People v. Williams, 175 A.C.A. 821	66, 140a, 217
People v. Wilson, 145 Cal. App. 2d 1	87, 91, 153, 177
People v. Winston, 46 Cal. 2d 151	157, 163
People v. Witt, 159 Cal. App. 2d 492	33, 94, 106, 119
People v. Wojahn, 169 Cal. App. 2d 135	187
People v. Woo Mee Foo, 159 Cal. App. 2d 429	133, 229
People v. Woods, 139 Cal. App. 2d 515	35, 158, 191
People v. Wright, 153 Cal. App. 2d 35	93, 157, 189, 193
People v. Yet Ning Yee, 145 Cal. App. 2d 513	61, 65, 87, 203
People v. Zamora, 163 Cal. App. 2d 400	192
People v. Zubia, 166 Cal. App. 2d 620	53, 69, 149
Powell v. Superior Court, 48 Cal. 2d 704	239, 247
Priestly v. Superior Court, 50 Cal. 2d 812	125
Robison v. Superior Court, 49 Cal. 2d 186	61
Rochin v. California, 72 S. Ct. 205, 342 U.S. 165	67, 191
Rogers v. Superior Court, 46 Cal. 2d 3	221, 233
Rose, Application of, 32 Fed. Supp. 103	195
Roviaro v. United States, 77 S. Ct. 623, 353 U.S. 53	129
Salata v. United States, 286 Fed. 125	179
Schindler v. Superior Court, 161 Cal. App. 2d 513	239, 241, 245
Shew v. United States, 155 Fed. 2d 628	197
Silverthorne Lumber Co. Inc. v. U.S., 40 S. Ct. 182, 251 U.S. 385	161, 197
Stein v. United States, 166 Fed. 2d 851	174
Thorp v. Dept. of Alcoholic Beverage Control, 175 A.C.A. 523	90, 183, 189
Trowbridge v. Superior Court, 144 Cal. App. 2d 13	39, 77, 105, 163, 195, 225
Tupper v. Superior Court, 51 Cal. 2d 263	241, 247
United States v. Cefaratti, 202 Fed. 2d 13	153
United States v. Coffman, 50 Fed. Supp. 823	197
United States v. Pugliese, 153 Fed. 2d 497	174
United States v. Sferas, 210 Fed. 2d 69	173
United States v. Slusser, 270 Fed. 818	179, 181
Vance v. Superior Court, 51 Cal. 2d 92	239, 241, 247
Walker v. Superior Court, 155 Cal. App. 2d 134	245
Weeks v. United States, 34 S. Ct. 341, 232 U.S. 383	231
Willson v. Superior Court, 46 Cal. 2d 291	39, 89, 115, 119, 159, 209
Wirin v. Parker, 48 Cal. 2d 890	187

## STATUTES

Code of Civil Procedure	
§ 1953.15	104
§ 1953.33	104
Penal Code	
§ 145	221
§ 286	191
§ 640	187
§ 653 (h)	187
§ 825	221
§ 834	15
§ 836	17, 19, 157, 203
§ 837	21
§ 841	205, 207, 209
§ 844	211, 213, 215, 217
§ 995	231, 233
Federal Communications Act	
47 USC § 605	187

## RULES OF COURT

Federal Rules, Criminal Procedure	
Rule 41-E	231

## CONSTITUTIONS

California Constitution	
Art. I, § 19	187

## Introduction

### THE EXCLUSIONARY RULE

Evidence obtained in violation of constitutional guarantees against unreasonable searches and seizures is inadmissible.

In the case of *People v. Cahan*, 44 Cal. 2d 434. (Overruling *People v. LeDoux*, 155 Cal. 535; *People v. Mayen*, 188 Cal. 237; *People v. Gonzales*, 20 Cal. 2d 165.)

The Court, in the majority opinion, stated:

*Federal decisions not binding.*

"... In developing a rule of evidence applicable to the state Court, this Court is not bound by the decisions that have applied the Federal rule, and if it appears that those decisions have developed needless refinements and distinctions, this court need not follow them. . . . Instead it opens the door to the development of workable rules governing searches and seizures and the issuance of warrants that will protect both the rights guaranteed by the constitutional provisions and the interest of society in the suppression of crime."

*People v. Cahan*, 44 Cal. 2d 434, 450-451;

*People v. Bock Leung Chew*, 142 Cal. App. 2d 400;

*People v. Ingle*, 53 A.C. 408 (Calif. Supreme Court Crim. 6564, Jan. 19, 1960).

A court may not dismiss an information on the grounds of illegality of arrest of defendant. The rule of the *Cahan* decision is limited to the inadmissibility of evidence.

*People v. Valenti*, 49 Cal. 2d 199.

The introduction of illegally secured evidence does not per se require a reversal of conviction, unless such evidence was prejudicial.

*People v. Herman*, 163 Cal. App. 2d 821.



**Part I**

**WHAT CONSTITUTES AN ARREST**

**Arrest—Defined**

Section 834 of the Penal Code defines an arrest as follows:

“An arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace-officer or by a private person.”



## Part II

### LEGALITY OF ARREST

#### A. With a Warrant

A peace officer may make an arrest in obedience to a warrant.

**Cal. Pen. Code § 836.**

The issuance of a search warrant is a judicial act based on facts found by the magistrate which may not be questioned except by an appellate court to determine its sufficiency as a matter of law.

**Arata v. Superior Court**, 153 Cal. App. 2d 767;

**People v. Nelson**, 171 A.C.A. 373.

The propriety of the issuance of a search warrant may be questioned only in the manner provided in Penal Code §§ 1539 and 1540. If this is not done, defendant is precluded from controverting the facts stated in the affidavit upon which the search warrant was based.

**People v. Nelson**, 171 A.C.A. 373 (holding that the court did have probable cause for issuing a search warrant for defendant's premises where the affiant, a state narcotics agent, was advised by an informer that marijuana plants were growing at the rear of defendant's premises and where affiant verified this fact by observing.)

**People v. Thornton**, 161 Cal. App. 2d 718, 722;

**People v. Phillips**, 163 Cal. App. 2d 541, 545;

**People v. Lepur**, 175 A.C.A. 851.





LEGALITY OF ARREST

B. Without Warrant

**1. BY PEACE OFFICERS**

A peace officer may make an arrest without a warrant.

"1. Whenever he has reasonable cause to believe that the person to be arrested has committed a public offense in his presence.

"2. When a person arrested has committed a felony, although not in his presence.

"3. Whenever he has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed."

**Cal. Pen. Code § 836.**

Under Penal Code Section 836, subdivision 2, where the officers do not have reasonable cause to believe an offense is being committed in their presence, the arrest, and search incident thereto, cannot be justified, even though defendant is in fact committing a felony.

**People v. Brown**, 45 Cal. 2d 640, 642;

**People v. Burgess**, 170 Cal. App. 2d 36;

**People v. Ingle**, 173 A.C.A. 670, 673.

*Misdemeanors*

A peace officer may make an arrest without a warrant for a *misdemeanor* only when he has probable cause to believe it is being committed in his presence. (§ 836, subd. 1)

**Coverstone v. Davies**, 38 Cal. 2d 315;

And, see

**Fobbs v. City of Los Angeles**, 154 Cal. App. 2d 464.

(See also cases under IV-D-2 and involving arrests for other misdemeanors.)



LEGALITY OF ARREST

B. Without Warrant

**2. BY PRIVATE PERSONS**

The authority of a private citizen to make an arrest is found in Penal Code § 837, as follows:

“A private person may arrest another:

“1. For a public offense committed or attempted in his presence.

“2. When the person arrested has committed a felony, although not in his presence.

“3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.”

A private citizen may make an arrest when circumstances exist which would cause a reasonable person to believe a crime had been committed in his presence.

**People v. Burgess**, 170 Cal. App. 2d 36.

(Investigators from the Department of Motor Vehicles were justified in arresting defendant without a warrant. An undercover operator hired by them made arrangements to purchase a driver's license from defendant and investigators overheard conversations between defendant and operator by means of a microphone worn by the operator.)

And, see

**People v. Ball**, 162 Cal. App. 2d 465; and

**People v. McCarty**, 164 Cal. App. 2d 322.



## Part II

### LEGALITY OF ARREST

#### B. Without Warrant

### 3. OFFENSE COMMITTED IN PRESENCE

An offense is committed in the presence of an officer when he receives knowledge of the commission of such offense through any of his senses, and this includes the sense of smell, and hearing.

**People v. Bock Leung Chew**, 142 Cal. App. 2d 400;

**People v. Clifton**, 169 Cal. App. 2d 617;

**People v. Burgess**, 170 Cal. App. 2d 36;

**People v. Bradley**, 152 Cal. App. 2d 527, 532 (officer hears telephone conversation in bookmaking case.);

**People v. Cahill**, 163 Cal. App. 2d 15 (officer overheard telephone conversation concerning prostitution.)

And see IV-B for specific offenses.



## Part II

### LEGALITY OF ARREST

#### C. Presumption of Legality of Arrest and Search

In the absence of evidence to the contrary, it must be presumed on appeal that the officers regularly and lawfully performed their duties, and where there is no showing that they did not have a warrant for the arrest or search, it must be presumed that the arrest and search were justified.

**People v. Guy**, 145 Cal. App. 2d 481;

**People v. Farrara**, 46 Cal. 2d 265 (case tried before the Cahan decision);

**People v. Beard**, 46 Cal. 2d 278;

**People v. Maddox**, 46 Cal. 2d 301;

**People v. Holguin**, 145 Cal. App. 2d 520;

**People v. Kelsey**, 140 Cal. App. 2d 722 (evidence showed nothing more than entry of private premises by police officers. Actions presumed lawful);

**People v. Van Randall**, 140 Cal. App. 2d 771;

**People v. Vaughn**, 155 Cal. App. 2d 596;

**People v. Morris**, 157 Cal. App. 2d 81;

**People v. Jaquish**, 170 Cal. App. 2d 376;

**People v. Prewitt**, 52 A.C. 342, 347;

**People v. Williams**, 172 A.C.A. 419.

The presumption that defendant's arrest for a narcotics offense was lawful, was sufficient to support a finding by the committing magistrate that the arrest was lawful and the search as incident thereto reasonable, where there was evidence that the officers did not have a warrant to search his room but there was no evidence as to whether they had a warrant for the arrest of the defendant.

**Hatjis v. Superior Court**, 144 Cal. App. 2d 426.

In a case tried before the *Cahan* decision the arrest and search were *not* presumed lawful where there was evidence to the contrary.

**People v. Kitchens**, 46 Cal. 2d 260.

When the question of the illegality of an arrest or search and seizure is raised, either at the preliminary hearing or at the trial, the defendant makes a *prima facie* case when he establishes that an arrest was made without a warrant or that private premises were entered or searched without a warrant, and the burden then rests on the prosecution to show proper justification. If no such evidence is presented the entry or the arrest is presumed unlawful.

**People v. Boyles**, 45 Cal. 2d 652;

**People v. Gorg**, 45 Cal. 2d 776;

**People v. Jennings**, 142 Cal. App. 2d 160;

**Badillo v. Superior Court**, 46 Cal. 2d 269;

**People v. Malone**, 173 A.C.A. 269;

**People v. Bock Leung Chew**, 142 Cal. App. 2d 400;



**People v. Silvestri**, 150 Cal. App. 2d 114;  
**People v. Dewson**, 150 Cal. App. 2d 119;  
**People v. Carswell**, 149 Cal. App. 2d 395;  
**People v. Smith**, 171 A.C.A. 616 (where defendant objected to the introduction of the evidence at the trial on the grounds that it was illegally obtained, but failed to establish that the officer had no warrant, the arrest and search were presumed lawful).

**Part III**

**RIGHT TO QUESTION SUSPECTS OR WITNESSES**

**A. In General**

It is not unreasonable for officers to seek interviews with suspects or witnesses, or to call on them at their homes for such purposes.

**People v. Martin**, 45 Cal. 2d 755;

**People v. Michael**, 45 Cal. 2d 751;

**People v. Mendoza**, 145 Cal. App. 2d 279.

Officers have a right to interrogate a person who commits a traffic violation.

**People v. Cantley**, 163 Cal. App. 2d 762, and see other cases under IV-D-2.

A suspect fitting the description of a felon, or in the area where a felony has been committed, may be questioned.

**People v. Romero**, 156 Cal. App. 2d 48;

**People v. Cantley**, 163 Cal. App. 2d 762.

It is reasonable for an officer to question a narcotics parolee to determine whether he was still on parole, where he was employed and where he lived.

**People v. Poole**, 174 A.C.A. 55.



### Part III

## RIGHT TO QUESTION SUSPECTS OR WITNESSES

### B. Outdoors at Night

There is nothing unreasonable in an officer's questioning a person outdoors at night.

**People v. Simon**, 45 Cal. 2d 645, 650;

**People v. Clifton**, 169 Cal. App. 2d 617;

**People v. Wiley**, 162 Cal. App. 2d 836;

**People v. Evans**, 175 A.C.A. 304.

" . . . A police officer has a right to make inquiry in a proper manner of anyone upon the public streets at a late hour as to his identity and the occasion of his presence, if the surroundings are such to indicate to a reasonable man that the public safety demands such identification."

**Gisske v. Sanders**, 9 Cal. App. 13, 16.

Thus, an officer may stop a person who is without visible means of support, who is acting suspiciously, who appears to be carrying a concealed weapon, etc., for purposes of questioning.

The mere fact that an officer may be justified in stopping and questioning a person abroad at night does not justify an intensive search of his person or his automobile.

**People v. Simon**, 45 Cal. 2d 645;

**People v. Gale**, 46 Cal. 2d 253.

*Inquiries reveal probable cause.*

The refusal to answer questions or inconsistent or evasive answers may, in itself, be one circumstance, among others, which would justify the police officer in making an arrest for vagrancy.

**People v. West**, 144 Cal. App. 2d 214 (defendant carrying armload of clothes, gives inconsistent explanations of possession, in area where burglaries recently committed).

Police officers were justified in interrogating persons on the street in the nighttime and ordering them from an automobile, where information they had received in the police station was corroborated by policeman's knowledge that other persons had been seen carrying weapons for a fight. Where, as they approached defendants they saw one defendant lean towards the seat of the car, they were justified in thinking it likely he had a weapon.

**People v. Jiminez**, 143 Cal. App. 2d 671.

It is reasonable for officers to seek interviews with suspects and if in such inquiries the accused voluntarily reveals evidence against himself he may not later assert that he acted only in response to an implied assertion of unlawful authority.

**People v. Jauregui**, 142 Cal. App. 2d 555 (defendant rolled up his sleeves and showed "hype" marks).

There is nothing unreasonable in an officer's questioning person outdoors at night and in view of the fact that it was 3:00 a.m., and a cab was doubleparked in front of a hotel, the officers had a right to order the occupants to get out of the cab for questioning. Where officer observed defendant withdraw his left hand from behind the seat, he had reasonable grounds to believe defendant was hiding contraband.

**People v. Blodgett**, 46 Cal. 2d 114.

Officers had a right to question defendant in a parked car at 1 a.m. When they saw a pistol on the floor of the car from the outside, this warranted further investigation and a search of the vehicle revealing objects which connected defendant with a burglary, was proper.

**People v. Murphy**, 173 A.C.A. 412.

An officer may question a person at night, and where defendant attempts to escape, thus corroborating information received by the officers, there was probable cause to arrest.

**People v. Dewson**, 150 Cal. App. 2d 119.

Defendant was parked in a car at night with a young girl, and when officer questioned him, defendant's claimed ownership was not consistent with the registration card in the car. Defendant got out of car on request, but refused to turn around so officer could pat him down for weapons. Officer recognized him as a past offender. Under these circumstances there was probable cause to arrest.

**People v. Washington**, 163 Cal. App. 2d 833.

At 11:20 p.m., officers patrolling residential area in which numerous burglaries had been reported, observed defendant carrying a gas can. They stopped him for questioning, observed a bulge under his shirt, which was caused by a rubber hose. Defendant told officer he had no money and intended to siphon gas. He was arrested on suspicion of burglary, searched further for weapons and a marijuana cigarette was found in a pocket.

The court held the officers had a right to make inquiry as to his identity and occasion of his presence because the surrounding circumstances were such as to indicate that the public safety demanded such an inquiry. When defendant admitted he was going to siphon gas, the officers could search further.

**People v. Jackson**, 164 Cal. App. 2d 759.

### *Conduct consistent with innocence.*

Though officers have a right to interrogate a man on streets at night, where defendant's conduct is consistent with innocence, and where police have already decided to arrest defendant and have commenced making the arrest they cannot rely on the argument that they were merely going to interview the defendant.

Defendant was believed to be dealing in narcotics and had been under surveillance. Arresting officers were told to observe defendant and if they believed "something was wrong" to arrest him. Defendant

drove up to his house, got out of the car, walked over to another car and talked to the occupant. He walked across the street towards his residence, looked at something that was on the windshield of another car and then disappeared. A few minutes later he reappeared at the foot of the stairs from his upstairs apartment, looked up and down the street with his hands in his pockets and crossed the street to where the officers were standing. The officers identified themselves and asked the defendant to take his hands out of his pockets. He refused and backed off from the officers. The officer took a package of marijuana from the defendant's hand. It was held to be an unlawful search and seizure. Defendant's conduct in backing away and in refusing to take his hands out of his pocket did not constitute suspicious conduct.

**People v. Harvey**, 156 Cal. App. 2d 516.

Prior to the arrest the officer had been told by an anonymous informant that the defendant was a known thief and dealt in narcotics and the officer had seen the defendant sitting in an automobile talking to a known addict about a month prior to the arrest. On the night of the arrest at about 2:00 a.m., the officer observed defendant in the doorway of a liquor store talking to another person; every few moments the defendant left the doorway, looked down the street and returned to the doorway. The officer asked the defendant what he was doing and defendant answered that he was waiting for a friend. After placing him under arrest for vagrancy, the officer told the defendant to take his hand out of his pocket and when defendant refused to do so, the officer grabbed his hand and found a marijuana cigarette. Held: There was insufficient probable cause to arrest for vagrancy, since the defendant might have been looking for a bus, a taxi, or a person.

**People v. Harris**, 146 Cal. App. 2d 142.



## RIGHT TO QUESTION SUSPECTS OR WITNESSES

## C. Precautionary Search

Where two men in a parked car on Lover's Lane, at night, suddenly flee from officers there is a necessity for investigation and under these circumstances the officers were justified in taking precautionary measures to insure their own safety on overtaking suspects. It was therefore reasonable to order the suspects to put their hands in front of them and to get out of the automobile to be searched for weapons before being questioned.

**People v. Martin**, 46 Cal. 2d 106.

The court said, by way of dictum, even if it were conceded that in some circumstances an officer making an inquiry of persons outdoors at night might be justified in running his hands over the person's clothing to protect himself from attack from a hidden weapon, certainly, a search so intensive as that made here could not be so justified. In this case the officer searched defendant's pockets and found a marijuana cigarette.

**People v. Simon**, 45 Cal. 2d 645, 650.

At the time of his arrest defendant was with a person who was wanted for burglary, and defendant himself fitted the description of a burglary suspect. (Description received from officers who were at the scene of the burglary.) The officers were justified in taking precautionary measures to search the suspects for weapons, and when the officers found marijuana on the defendant's person they were justified in taking it.

**People v. Brittain**, 149 Cal. App. 2d 201.

It was proper for officers to order defendant out of his car and make a precautionary search of defendant's car for weapons, where a man wanted for burglary was arrested outside the car and told officers that there were guns and "hot stuff" in the car.

**People v. Witt**, 159 Cal. App. 2d 492.

Officers questioned the roommate of a person arrested for robbery, and made a precautionary search of his person for weapons, before requesting permission to search the room.

**People v. Bouchard**, 161 Cal. App. 2d 302.





#### Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### A. General Definitions

Reasonable cause is such a state of facts as would lead a man of ordinary care and prudence to believe, or entertain an honest, strong suspicion, that the person in question is guilty of a crime.

**People v. Kilvington**, 104 Cal. 86;  
**People v. Woods**, 139 Cal. App. 2d 515;  
**People v. King**, 140 Cal. App. 2d 1;  
**People v. Rodriguez**, 140 Cal. App. 2d 865;  
**People v. Moore**, 140 Cal. App. 2d 870;  
**People v. Moore**, 141 Cal. App. 2d 87;  
**People v. Smith**, 141 Cal. App. 2d 399;  
**People v. Edwards**, 142 Cal. App. 2d 419;  
**People v. Jaurequi**, 142 Cal. App. 2d 555;  
**People v. Soto**, 144 Cal. App. 2d 294;  
**Montgomery v. Superior Court**, 146 Cal. App. 2d 622;  
**People v. Hickman**, 143 Cal. App. 2d 79;  
**People v. Brown**, 147 Cal. App. 2d 352;  
**People v. Dewson**, 150 Cal. App. 2d 119;  
**People v. Hood**, 150 Cal. App. 2d 197;  
**People v. Silvestri**, 150 Cal. App. 2d 114;  
**People v. Gusukuna**, 152 Cal. App. 2d 135;  
**People v. Adame**, 169 Cal. App. 2d 587;  
**People v. Carnes**, 173 A.C.A. 625;  
**People v. Ingle**, 53 A.C. 408 (Calif. Supreme Court Crim. 6564, Jan. 19, 1960).

Probable cause is that which inclines the mind to believe, but leaves some room for doubt.

**People v. Rixner**, 157 Cal. App. 2d 387;  
**People v. Murphy**, 173 A.C.A. 412;  
**People v. Nagle**, 25 Cal. 2d 216;  
**People v. Ingle**, 53 A.C. 408 (Calif. Supreme Court Crim. 6564, Jan. 19, 1960).

Reasonable cause is a suspicion founded on circumstances sufficiently strong to warrant a reasonable man in the belief that the charge is true.

**People v. Clifton**, 169 Cal. App. 2d 617;  
**People v. Mateo**, 171 A.C.A. 917.



## Part IV

# WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

## A. General Definitions

### 1. QUESTION OF LAW

Probable cause to arrest is a question of law.

**People v. Paul**, 147 Cal. App. 2d 609;

**People v. Silvestri**, 150 Cal. App. 2d 114;

**Gibson v. J. C. Penney**, 165 Cal. App. 2d 640.

The arresting officer must testify to the facts or information known to him and on which he relies to justify the search or arrest. The court then decides as a matter of law whether or not the facts disclose reasonable grounds for the entry.

**People v. Malone**, 173 A.C.A. 269, 276.

In considering the question of reasonable cause for the officer to act, the court looks only to the facts and circumstances presented to the officer at the time he was required to act.

**People v. Ingle**, 53 A.C. 408 (Calif. Supreme Court Crim. 6564, Jan. 19, 1960);

**People v. Wiley**, 162 Cal. App. 2d 836;

**People v. Murphy**, 173 A.C.A. 412;

**People v. Paul**, 147 Cal. App. 2d 609;

**People v. Kilvington**, 104 Cal. 86;

**People v. Hupp**, 61 Cal. App. 2d 447;

**People v. Silvestri**, 150 Cal. App. 2d 114;

**People v. Evans**, 175 A.C.A. 304.

The court and not the officer must make the determination whether the officer's belief is based on reasonable cause.

**People v. Murphy**, 173 A.C.A. 412.

Whether or not probable cause exists in a particular case must be decided on the facts and circumstances of that case, and on the total atmosphere of the case.

**People v. Jaurequi**, 142 Cal. App. 2d 555;

**People v. Murphy**, 173 A.C.A. 412;

**People v. Adame**, 169 Cal. App. 2d 587.

"Police officers are guardians of the peace and security of the community; their problems are manifest and complex and they should not be held to accountability greater than that required of any other reasonable or prudent man under like circumstances."

**People v. Ingle**, 53 A.C. 408 (Calif. Supreme Court Crim. 6564, Jan. 19, 1960).

### *Question of Fact*

It is the exclusive province of the trial judge or jury to determine the credibility of a witness concerning probable cause, and the truth or falsity of the facts on which a determination depends, and a reviewing court cannot reject such testimony unless there exists either a

physical impossibility that it is true or its falsity is apparent without resorting to inferences or deductions.

**People v. Muniz**, 172 A.C.A. 826.

The weight to be accorded the information upon which the officers act in making an arrest for a felony is to be determined by the trial court in the exercise of a sound discretion. So long as the good faith of the arresting officer with respect to reliability of the informant satisfies the trial judge, the officer is in the same position as if he had an arrest warrant.

**Lorenzen v. Superior Court**, 150 Cal. App. 2d 506.

When the trier of fact has determined the existence of the facts upon which probable cause depends, this determination of fact should be accepted by the reviewing court.

**Lorenzen v. Superior Court**, 150 Cal. App. 2d 506, 510 (reliability of informant);

**People v. Dewson**, 150 Cal. App. 2d 119 (evidence of attempted escape);

**People v. Muniz**, 172 A.C.A. 826;

**People v. Malone**, 173 A.C.A. 269.

### *Province of Jury*

Probable cause for arresting is a question of law to be decided by the court rather than the jury, but when the facts are controverted the jury should be told that if they find the facts in a designated way such facts do or do not amount to probable cause. The conflict must concern the existence of facts and circumstances on which the officers based the arrest, not such conflicts as are created by subsequent events.

**People v. Paul**, 147 Cal. App. 2d 609;

**People v. Silvestri**, 150 Cal. App. 2d 114;

**Gibson v. J. C. Penney**, 165 Cal. App. 2d 640 (an instruction only on the definition of probable cause is not sufficient. The jury must be required to determine specific facts. Where the jury was instructed that if they believed there was probable cause or if they believed that it reasonably appeared to the defendant that the plaintiff took three pairs of pedal pushers from the counter, the defendant had probable cause to detain the plaintiff, this was sufficient instruction).

Since evidence that was either inadmissible or prejudicial would frequently be presented to them if the jury were required to pass on the legality of the search, an instruction permitting the jury to determine the existence of probable cause was prejudicial.

**People v. Silvestri**, 150 Cal. App. 2d 114, 117, 118.

The fact that the issue of reasonableness of search and seizure without warrant was determined by the court as a matter of law out of hearing of the jury would not constitute a denial of trial by jury.

**People v. Dewson**, 150 Cal. App. 2d 119, 126-127.

It would have been error to submit the question of probable cause to the jury had it not been for the consent given by both prosecution and defense to have the jury try that issue.

**People v. Ames**, 151 Cal. App. 2d 714, 723.

(and see V A 1).

**Part IV**

**WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE  
ARRESTEE HAS COMMITTED FELONY**

**A. General Definitions**

**2. VALIDITY OF ARREST DOES NOT DEPEND  
ON GUILT**

Validity of arrest does not depend on the guilt of the defendant, and proof of probable cause is not limited to evidence which would be admissible at trial on issue of guilt.

**People v. Easley**, 148 Cal. App. 2d 565;

**People v. Hickman**, 143 Cal. App. 2d 79;

**People v. Rios**, 46 Cal. 2d 297;

**People v. Boyles**, 45 Cal. 2d 652;

**Willson v. Superior Court**, 46 Cal. 2d 291;

**People v. Jaurequi**, 142 Cal. App. 2d 555;

**Trowbridge v. Superior Court**, 144 Cal. App. 2d 13;

**People v. Merino**, 151 Cal. App. 2d 594, 597;

**People v. Hood**, 150 Cal. App. 2d 197, 200.

Reasonable cause to justify an arrest may consist of information obtained from others and may be hearsay.

**People v. Hood**, 150 Cal. App. 2d 197, 200.

The fact that a defendant is exonerated in the criminal proceeding has no bearing on the legality of the arrest. Conversely the finding of guilt in a subsequent criminal proceeding cannot legalize an arrest unlawful when made.

**People v. Burgess**, 170 Cal. App. 2d 36.

The test for reasonable cause is not whether the evidence on which the officer acts in making the arrest is sufficient to convict but only whether the person should stand trial.

**People v. Ingle**, 53 A.C. 408 (Calif. Supreme Court Crim. 6564, Jan. 19, 1960).



## Part IV

# WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

## B. Factors Considered

### 1. DESCRIPTION OF PERSON OR AUTOMOBILE

#### a. Sufficient Probable Cause

Officers learned of an all-points bulletin in reference to a theft of a green Mercury Montclair coupe with a certain Washington State license number and that one Janet Jones had been a suspect and had been charged with stealing it. The car had previously been seen by officers being driven by defendant. When officers saw the car drive up to defendant's house and saw two women step out of the car there was probable cause to believe that the two women were guilty of a felony. They then had reasonable cause to enter the house in which the women and defendant resided to arrest the women.

**People v. Littlejohn**, 148 Cal. App. 2d 786.

A robber was described as Mexican, 18 years old, 5 feet 6 or 7 inches tall, thin, wearing a light, long-sleeved shirt, khaki pants, with dark, curly hair (uncombed), bloodshot eyes and was swaying back and forth. He was said to be driving a 1950-1953 convertible automobile and had a shiny pistol. The money was in a yellow paper bag. Police stopped a car with a passenger fitting robber's description. The officers properly searched the driver and passenger (defendant), then looked through car window and saw receipts from the lunch counter.

**People v. Borbon**, 146 Cal. App. 2d 315.

Police had information that a girl called "Frankie," wearing a brown sweater, levis, and having the appearance of a boy, was selling heroin in front of a certain cafe. Police went to the cafe, saw a girl answering this description who answered to the name "Frankie." The identification of the girl was so accurate as to lend reliability to the information.

**People v. Holguin**, 145 Cal. App. 2d 520.

At the time of his arrest defendant was with a person who was wanted for burglary and whom the officers were awaiting to arrest, and defendant himself fitted the description of a burglary suspect received from officers who were at the scene of the burglary. The officers were justified in taking precautionary measures to search the suspects for weapons when they encountered them, and when the officers found contraband (marijuana) on the defendant's person they were justified in taking it.

**People v. Brittain**, 149 Cal. App. 2d 201.

Officers observed defendant make an illegal U-turn. As defendant pulled over to the curb they observed the defendant reach under the front seat of the vehicle. The officers had a physical description of a



robbery and murder suspect as "approximately 5'8" or 9", 170 to 180 pounds, male Negro, wearing a dark jacket and light pants", and believed that defendant fitted the description. The officers opened the car door on the driver's side and saw a revolver lying on the floorboard.

The court said that when the officers saw defendant make a U-turn they had a right to interrogate him. The furtive act plus the description gave the officers reasonable cause to believe that defendant had committed a felony.

**People v. Cantley**, 163 Cal. App. 2d 762.

Defendant was arrested and searched with probable cause where two burglary victims described defendant to officers as small, wearing dark jacket and light colored trousers, and where defendant was observed in the area of the burglaries a short time later wearing clothing answering the description. On being questioned, defendant refused to give his name and address and failed to give a reasonable explanation of his presence in the area.

**People v. Romero**, 156 Cal. App. 2d 48.

Where reliable informant told officers that "Red" (who was arrested first, with heroin in his possession) and his associate, described as a 40 year old man, 5' 10", 160-170 pounds, who combed his hair straight back, and never wore a hat were trafficking in narcotics, and where defendant fitted this description and was seen with "Red", defendant's arrest was justified.

**People v. Thomas**, 156 Cal. App. 2d 117.

And, see

**People v. White**, 159 Cal. App. 2d 586, where reliable informant gave description of defendant and told where he could be found.

An armed robbery of a liquor store was reported and Q told a deputy sheriff that he had witnessed a yellow Cadillac with red wheels, license GC4, make a U-turn, park in front of his window; that the men in the car got out and were arguing about a gun; and it appeared to him a forcible exchange of guns had taken place. Arresting officers found the car and saw four men get in it.

Held officers had reasonable cause to arrest and search car.

**People v. Vaughn**, 155 Cal. App. 2d 596.

A reliable informant gave the officer a description of defendant who was "dealing in narcotics". The defendant was described as wearing a gray hat, orange shirt, and limped. The informant said defendant was standing in front of a certain hotel, where the officer lawfully arrested and searched the defendant.

**People v. Johnson**, 157 Cal. App. 2d 555.

Defendant fitted the description given by the victim of an armed robber. The victim refused to positively identify the defendant but said he looked like the man. Later the officers learned that defendant

had been in the vicinity when the crime was committed. They observed the defendant preparing to leave town. At this time he was arrested and searched.

The court said in dictum this was sufficient to give the officers reasonable cause.

**People v. Spellings**, 141 Cal. App. 2d 457;

**People v. Villarico**, 140 Cal. App. 2d 233.



#### **Part IV**

### **WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY**

#### **B. Factors Considered**

### **1. DESCRIPTION OF PERSON OR AUTOMOBILE**

#### **b. Insufficient**

Officers had information that a Negro named "Bozo," driving an Oldsmobile "98" convertible with a blue top and light colored body, was selling narcotics in the San Francisco area. This description was insufficient to provide probable cause for arrest because no physical description was given and it was not indicated that the defendant's activities were confined to any particular area. If this were sufficient officers could arrest any Negro driving this common make of automobile in the entire San Francisco area.

**People v. Dewson, 150 Cal. App. 2d 119.**



**Part IV**

**WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE  
ARRESTEE HAS COMMITTED FELONY**

**B. Factors Considered**

**1. DESCRIPTION OF PERSON OR AUTOMOBILE**

**c. Mistaken Identity**

Where the officers have probable cause to believe that John Smith has committed a crime and arrest Richard Roe in the honest and reasonable belief that they were arresting John Smith, a search of the person of Richard Roe would be reasonable.

**People v. Kitchens, 46 Cal. 2d 260.**



## Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### B. Factors Considered

#### 2. AT NIGHT

The following cases illustrate that where defendant is outdoors at night this is one of the factors which may be considered in determining probable cause, to search or arrest, but it is not enough alone.

Reasonable cause at night may be illustrated by a few California cases. The case of *People v. Kilvington*, 104 Cal. 86, involved the trial of a special officer shooting a person at night. The special officer observed the deceased running, pursued by another person who was shouting, "Stop thief." The officer did not recognize the deceased and ordered the man to stop.

The order was not obeyed. He fired his pistol in an attempt to frighten the running man. His shot killed the man. The court held that under the circumstances the officer could reasonably suspect or believe that the person may have committed robbery or burglary or grand larceny, and that he was thus empowered to arrest the person, and hence the shooting was lawful.

In the case of *Gisske v. Sanders*, 9 Cal. App. 13, the fact that crimes had been recently committed in the neighborhood in which the accused was stopped, that the accused at a late hour was found in the locality, that he refused to answer proper questions establishing his identity, were circumstances which made it reasonable for the officer to require the presence of the accused at the station.

Defendant outdoors at night with armload of clothing, in neighborhood where burglaries recently committed, entitled officers to question and where answers were evasive, arrest was proper.

**People v. West**, 144 Cal. App. 2d 214.

The court held the arrest legal where defendant was found sitting in his car at 4:00 a.m. in front of a store with the motor running and where he attempted flight as the police approached, the search of the vehicle was lawful. Dictum, since no objection made at trial.

**People v. Shannon**, 147 Cal. App. 2d 300.

Reasonable cause for an arrest existed where the officers were informed that the defendant had entered a liquor store at 2:00 a.m. with a fierce look on his face, and without answering the clerk's greeting, went back into the living room of the store where he was told not to go.

**People v. Paul**, 147 Cal. App. 2d 609.

The mere fact that defendant was walking on a street with a twenty-year old friend, who had a bottle, in a warehouse district, at night, did not give Officer Reed cause to believe defendant had committed a felony.

**People v. Simon**, 45 Cal. 2d 645.



At 8:00 p.m. officers noticed defendant in a car. As police car stopped, three men standing by the vehicle walked hurriedly away. Officers were justified in questioning and ordering them to stop, and ordering defendant to get out of car.

**People v. Wiley**, 162 Cal. App. 2d 836.

and see III B.

#### Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### B. Factors Considered

### 3. ATTEMPT TO ESCAPE

Where defendant at night sought entry to a hotel room in which narcotics investigation was in progress, where he attempted to flee at the sight of the officers at the door, the officers could forcibly detain the defendant from his flight.

**People v. Edwards**, 142 Cal. App. 2d 419.

In *People v. Martin*, 46 Cal. 2d 106, two men in parked car on lovers lane attempted to flee from officers. Officers had reasonable cause to order them out of car and seize package on front seat.

Where deceased was running, and was pursued by another person shouting "stop thief," there was reasonable cause to arrest and hence officer was justified in shooting.

**People v. Kilvington**, 104 Cal. 86.

The court held the arrest legal where defendant was found sitting in his car at 4:00 a.m. in the morning in front of a store with the motor running and where he attempted flight as the police approached, the search of the vehicle was lawful. Dictum, since no objection made at trial.

**People v. Shannon**, 147 Cal. App. 2d 300.

At midnight, a car in an alley was going fifteen miles per hour and came upon police. Suddenly the car's speed increased to thirty miles per hour and bore down on police, barely missing them. Police had a right to search the car.

**People v. Dore**, 146 Cal. App. 2d 541.

Police officers have reasonable cause to arrest without a warrant where defendant backed up his automobile and drove forward at a high rate of speed, after police officers had identified themselves, displayed their badges and asked the defendant to open the door of the car.

**People v. Dewson**, 150 Cal. App. 2d 119.

Officers observed defendant walking toward them, with his right hand cupped alongside his body. He ignored the officer's request to talk to him, dropped a marijuana cigarette to the ground, and ran. These observations constituted reasonable cause.

**People v. Spicer**, 163 Cal. App. 2d 678.

In area where burglaries had been reported, officers were justified in questioning defendant, when three men standing by the car walked hurriedly away on officers' arrival.

**People v. Wiley**, 162 Cal. App. 2d 836.

Defendant observed talking to known addicts ran up an alley as officers approached, and when finally stopped by the officers made a motion toward his pocket.

**People v. Taylor**, 174 A.C.A. 477.

**People v. Carnes**, 173 A.C.A. 625 (defendant turned into alley after seeing police car).

Officers had an apartment under observation. As defendant left the apartment, the officer approached him and identified himself as an officer, whereupon defendant ran into driveway of building next door and dropped a piece of newspaper which contained balloons with capsules of heroin. Defendant was then arrested. Held, there was probable cause for arrest.

**People v. Cisneros**, 166 Cal. App. 2d 100.

Defendant fitted the description given by the victim of an armed robber. The victim refused to positively identify the defendant but said he looked like the man. Later the officers learned that defendant had been in the vicinity when the crime was committed. They observed the defendant preparing to leave town. At this time he was arrested and searched.

The court said in dictum this was sufficient to give the officers reasonable cause.

**People v. Spellings**, 141 Cal. App. 2d 457.

But compare the following :

Where defendant's flight is caused by the threat of officers to illegally search his person and where defendant drops marijuana from his person during the flight as a product of the threat, the evidence is illegally obtained.

**Gascon v. Superior Court**, 169 Cal. App. 2d 356.

And, see

**Badillo v. Superior Court**, 46 Cal. 2d 269.

## Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### B. Factors Considered

#### 4. FURTIVE ACTIONS

##### *Attempts to Conceal*

Where defendant leans toward or reaches toward the seat of a car or withdraws his hand from behind the seat, officers may reasonably believe he is concealing contraband.

**People v. Jiminez**, 143 Cal. App. 2d 671;

**People v. Blodgett**, 46 Cal. 2d 114;

**People v. Sanson**, 156 Cal. App. 2d 250;

**People v. Cantley**, 163 Cal. App. 2d 762;

**People v. Zubia**, 166 Cal. App. 2d 620 (as officer approached car, defendant jumped into automobile and covered two paper sacks with a blanket).

Where defendants try to dispose of contraband there is probable cause.

**People v. Amado**, 167 Cal. App. 2d 345 (defendant put something in his mouth);

**People v. Anders**, 167 Cal. App. 2d 65 (brown package thrown from car window);

**People v. McMurray**, 171 A.C.A. 194 (known narcotics peddler starts to run and throws away an object on being approached by police officers);

**People v. Poole**, 174 A.C.A. 55 (officer tries to interview defendant who was a parolee but defendant turned away and made a quick motion of his hand to his mouth);

**People v. Taylor**, 174 A.C.A. 477 (defendant observed talking to known addicts ran up an alley as officers approached, and when finally stopped by the officers made a motion toward his pocket);

**People v. Brajevich**, 174 A.C.A. 469 (defendant, questioned on the street late at night, gave inconsistent explanations, admitted previous arrests, denied ownership of a car parked on the street which was registered to him, and as officers stepped from the car made an underhand throwing motion with his hand).

##### *No Probable Cause*

Police officers had been told by informant (no showing of reliability) that defendant was a thief and a dealer in narcotics. Officers had seen defendant sitting in an automobile talking to a known narcotic addict. Police had often observed defendant on the streets after 2 a.m. Defendant claimed to be working in a hospital.

On the evening of the arrest officers observed defendant in the doorway of a liquor store. They saw him leave the doorway every few minutes, look down the street, and return. At 2 a.m., the officers stopped him. They testified that he *looked as though he were concealing something, so they told him to take his hand out of his pocket. He refused.* They arrested him on a charge of *vagrancy* and searched him. This was after he had told them he was on his way home and was waiting for a friend.

Held: There was no probable cause for the arrest or the search.

**People v. Harris**, 146 Cal. App. 2d 142.

*Other Types of Furtive Conduct*

There was probable cause to arrest the defendant Tahtinen on the following facts: Three addicts who had been previously arrested on several occasions told the officers that they had purchased narcotics from Hernandez at a certain address. Officers went to that address and saw defendant Tahtinen sitting in a Buick parked across the street. They knew that Hernandez did not drive a Buick and the defendant was not Hernandez. They observed Tahtinen travel South, make a left turn and park on the South side of the street, then make a U-turn and park on the North side of the street in front of Hernandez' house. The defendant remained in his car for about half an hour, walked towards the house and disappeared up an alley. Later, defendant returned to his car, drove around and parked at the end of the alley which he had formerly entered, opened the car door on the passenger side and appeared to pick up some object from the base of a tree. The officers then arrested the defendant and found heroin in the car. The information received from the addicts, coupled with the officers' observations of defendant's *furtive conduct*, established reasonable cause for the arrest.

**People v. Tahtinen**, 50 Cal. 2d 127.

Where officers had reliable confidential information concerning possession of narcotics by occupants of a certain apartment, the defendant's furtive conduct on leaving the place lent further credence to the officers' belief that he was a narcotics violator, where, upon leaving the apartment the defendant walked down the street looking back over his shoulder frequently and carefully scrutinizing passing automobiles.

**People v. Augustine**, 152 Cal. App. 2d 264, 265, 266.

## Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### B. Factors Considered

#### 5. REFUSAL TO ANSWER QUESTIONS, EVASIVE ANSWERS, ETC.

Refusal by defendant to answer proper questions concerning his identity, was a circumstance considered in *Gisske v. Sanders*, 9 Cal. App. 13.

Suspicious circumstances justifying an arrest were provided when defendant was walking at night with a bundle of clothes and in answer to questions by the police officers first said that the clothes were his, then demonstrated that most of the apparel was women's, that the cleaner's mark on the clothes was that of a different cleaner than that from which he said he was coming, and finally, changed his story to state that he had found the clothes when a taxicab had pulled away.

***People v. West*, 144 Cal. App. 2d 214.**

Where officers knew recent burglaries had been committed in neighborhood, they were justified in stopping defendant who was walking along the street at 8 p.m. with a flashlight and gloves protruding from his pocket. When officers had to call out three times for defendant to stop before he complied and when defendant could give no identification and gave a non-existent address, there was reasonable cause to arrest and search.

***People v. Ambrose*, 155 Cal. App. 2d 513.**

Where defendant, parked in car at night with young girl, claimed ownership of car not consistent with registration card in car, and refused to be "patted down" for weapon, officer could arrest.

***People v. Washington*, 163 Cal. App. 2d 833.**

Defendant, answering description of burglar, properly arrested when he refused to give his name and address, and failed to give reasonable explanation of his presence in area of burglaries at 2:40 a.m.

***People v. Romero*, 156 Cal. App. 2d 48.**

Defendant was seen at midnight in the vicinity where a murder had been committed three weeks earlier. When he saw the officers, he turned and walked in another direction. Officers approached him, saw the blade of a table knife protruding from his pocket and questioned him on his reason for being in the area. When he gave conflicting stories, he was arrested for vagrancy.

***People v. Duncan*, 51 Cal. 2d 523.**



## Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### B. Factors Considered

#### 6. ADMISSIONS

There was reasonable cause for defendant's arrest and a search of his person where a deputy sheriff recognized defendant as a person he had previously arrested on a narcotics charge, where he observed marks resembling hypodermic marks on defendant's arms, and where defendant admitted that he had taken an injection of heroin two weeks previously.

**People v. Rios**, 46 Cal. 2d 297;

**People v. Smith**, 141 Cal. App. 2d 399;

**People v. Augustine**, 152 Cal. App. 2d 264;

**People v. Olson**, 166 Cal. App. 2d 532. (Probable cause to search truck where defendant who was questioned in his apartment admitted he had smoked marijuana and told officers he had marijuana cigarettes in the ashtray of his truck.)

See cases under III-B, where defendant, in response to proper questioning, voluntarily reveals evidence against himself, and cases under IX, where defendant makes statement while in custody.





# WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

## B. Factors Considered

### 7. CRIMINAL RECORD KNOWN

In determining whether there is reasonable cause to believe a person guilty of a felony, the police officer may take into account the past conduct, character and reputation of the person suspected.

**People v. Wickliff**, 144 Cal. App. 2d 207 (defendant had been twice arrested before the narcotics violations);

**People v. Gorg**, 157 Cal. App. 2d 515;

**People v. Luna**, 155 Cal. App. 2d 493;

**People v. Washington**, 163 Cal. App. 2d 833 (defendant recognized as a past offender by officers, claimed ownership of a car inconsistent with registration in the car);

**People v. Sayles**, 140 Cal. App. 2d 657 (officer's knowledge of defendant's prior narcotics addiction corroborated information from an informer);

**People v. Jaurequi**, 142 Cal. App. 2d 555 (officers had a right to question a known narcotics user).

But the fact that the defendant has been arrested or convicted previously does not alone provide probable cause.

**People v. Molarius**, 146 Cal. App. 2d 129;

**Gascon v. Superior Court**, 169 Cal. App. 2d 356 (defendant, questioned on a street at night, said he had been "busted" before and in response to a threat of illegal search, started to run);

**People v. Sanders**, 46 Cal. 2d 247 (defendant known to officers as having been convicted of bookmaking).

The court said there is no injustice in holding that a past criminal record is one of several facts constituting justification to be suspicious. The officers may also take into account the fact that defendant was in the company of another addict. "[The principle that] the citizen shall not be subjected to unreasonable treatment at the hands of the agents of society must be tempered with some reasonable appreciation of the facts of life and of the great dangers and difficulties which beset the officer of the law in his efforts to protect the community from the blighting scourge of the narcotic traffic."

**People v. Hollins**, 173 A.C.A. 110.

On numerous occasions defendant who had had four or five convictions for narcotics offenses was observed with known narcotics users. Twice he was questioned and searched and failed to give a satisfactory explanation for substantial amounts of money on his person. The officers had information from informants that defendant was selling narcotics. Defendant was also observed with a known user, searching through a clump of Bermuda Grass and when he emerged he had a piece of tinfoil in his hands.

Held this was reasonable cause to arrest.

?

**People v. Fabela, 175 A.C.A. 577.**

## Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### B. Factors Considered

#### 8. REPUTATION OF PREMISES KNOWN

Held probable cause to arrest for sale of narcotics where defendant, manager of a cafe which had a reputation for narcotics, went to the storeroom, came out, appeared to hand a white object to a man nearby, waved the man to leave by the rear door, and where the man complied and left rapidly.

**People v. Coleman**, 134 Cal. App. 2d 594.

Police had the house of defendant, a known user of narcotics, under surveillance for a month. During this time, they saw known users enter defendant's house. On one occasion, after seeing a man visibly under the influence of narcotics leave the house, police officers arrested the man and knocked on defendant's door. Defendant said, "Who's there. Come in." Police went in and saw heroin. Defendant was apparently under the influence of narcotics. A search produced more heroin. Held: Consent to enter. Once in the house, officers could see heroin and could see defendant's addiction. Dictum: Probable cause even without consent.

**People v. Mendoza**, 145 Cal. App. 2d 279.

The evidence at the preliminary hearing that defendant was present at a place where narcotics had been sold and that he had in his possession a narcotic when arrested was sufficient to warrant the committing magistrate in holding the defendant to answer before the Superior Court. Defendant failed to object to admissibility of evidence.

**Robison v. Superior Court**, 49 Cal. 2d 186.

Reasonable cause to arrest for narcotics found, where officer had information from various informers (one at least was reliable), knew of defendant's past record for narcotics, and saw known addicts going in and out of the premises.

**People v. Gorg**, 157 Cal. App. 2d 515.

#### *No Probable Cause*

The mere fact that at the moment of search defendant was on premises which officers had reason to believe contained contraband would not justify search and arrest.

**People v. Yet Ning Yee**, 145 Cal. App. 2d 513;

**People v. Green**, 152 Cal. App. 2d 886.

The mere fact that a house had been under surveillance by the narcotics detail for several months, that it was closed to curious eyes and that strange men drove on its premises and sauntered on its walks was not authority to arrest a man standing on the adjacent street.

**People v. Schraier**, 141 Cal. App. 2d 600.

The fact that another person was arrested on the same premises on the previous day does not alone constitute probable cause to arrest the defendant for bookmaking at the same premises.

**People v. Sanders, 46 Cal. 2d 247.**

#### Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### B. Factors Considered

#### 9. CRIMES RECENTLY COMMITTED IN NEIGHBORHOOD

Where officers, patrolling a district reputed to be frequented by "pushers," peddlers and users of narcotics, were attracted by defendant's mannerisms and, during a conversation with him, noted that his eyes seemed "pin pointed and reddish" akin to one "under the influence of alcohol or narcotics," and where, as he alighted from a police car, they observed a piece of newspaper protruding from his pants cuff, wrapped in such a way as to resemble, in the officers' opinion, a bundle of narcotics, there was reasonable cause for his detention, and a search, as an incident to that arrest, was reasonable.

**People v. Rodriguez**, 140 Cal. App. 2d 865.

Defendant's suspicious actions and answers in conjunction with the fact that officers had numerous reports of burglaries in the area were held to justify the arrest.

**People v. West**, 144 Cal. App. 2d 214.

The fact that crimes had been recently committed in the neighborhood in which the accused was stopped, that the accused at a late hour was found in the locality, that he refused to answer proper questions establishing his identity, were circumstances which made it reasonable for the officer to require the presence of the accused at the station.

**Gisske v. Sanders**, 9 Cal. App. 13.

A police officer, while patrolling a district at 1:30 a.m., in which he knew narcotics were sold, saw defendant and another woman enter an alley and converse. He saw defendant placing something in the other woman's hand. Then he heard a sound similar to the sound of a coin dropping. Defendant picked it up and handed it to the other woman, who reached into her purse and handed an object to defendant. The officer followed defendant, arrested her, and searched her. Held: The arrest was lawful. Reasonable and probable cause for belief that a person has committed a felony must be measured by the facts presented to the officer at the time he is required to act. The time of night, the location of defendant's activities, together with her unusual conduct, were sufficient for probable cause.

**People v. Brown**, 147 Cal. App. 2d 352.

And see the following cases where crimes recently committed in the neighborhood were considered as a factor in the probable cause, but not a determinative one.

**People v. Wiley**, 162 *Cal. App. 2d* 836. (Reports of thefts and burglaries justified questioning defendant in parked car when three men walked hurriedly away as police arrived.)

**People v. Ambrose**, 155 *Cal. App. 2d* 513 (recent burglaries in area justified questioning defendant who had flashlight and gloves).

# WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

## B. Factors Considered

### 10. ARRESTEE IN COMPANY OF OTHERS BELIEVED FELONS

The fact that defendant is at premises which officers believe contains contraband or the mere presence of the defendant at the time of the arrest of a third person does not justify a search of the defendant's person or defendant's arrest.

**People v. Kitchens**, 46 Cal. 2d 260;

**People v. Yet Ning Yee**, 145 Cal. App. 2d 513;

**People v. Ingle**, 173 A.C.A. 670 (fact that defendant was sitting in G's car with A where officers had probable cause to arrest both G and A for possession of marijuana was not sufficient to justify defendant's arrest);

**People v. Harris**, 146 Cal. App. 2d 142 (defendant seen talking to a known narcotic addict).

The mere fact that defendant was walking on a street with a twenty-year-old friend, who had a bottle, in a warehouse district, at night, did not give reasonable cause to believe defendant was contributing to delinquency of a minor.

**People v. Simon**, 45 Cal. 2d 645;

**Hernandez v. Superior Court**, 143 Cal. App. 2d 20

But contrast

Where officers have probable cause to believe that 'B' and 'C' are committing a felony, such as possession or peddling of narcotics, 'A' may be arrested if he is in the company of 'B' or 'C' although the officers have no prior information as to 'A'.

**People v. Hickman**, 143 Cal. App. 2d 79;

**People v. Rollins**, 161 Cal. App. 2d 560 (where officers received information that 'M' was selling heroin at a certain address, defendant who was at that address with 'M' was properly arrested);

**People v. Ingle**, 53 A.C. 408 (Calif. Supreme Court Crim. 6564, Jan. 19, 1960) (arrest of defendant lawful where officers knew that A was a peddler and user of narcotics and was implicated in a purchase of narcotics by an undercover operator from G. Defendant was found sitting in G's car with A shortly after the purchase. The officers had no previous knowledge about defendant but they knew that contraband had just been transported in G's car and had reasonable grounds for inferring that G had purchased the narcotics from A).

Where there is additional corroboration, the fact that defendant is in the company of other felons or persons arrested with probable cause,



or is at the premises which officers have reasonable cause to search is a factor to be considered in determining whether probable cause to arrest or search the defendant exists.

**People v. Boyd**, 173 A.C.A. 597 (defendant's residence at the premises and his presence during narcotics sales, justified arrest).

**People v. Soto**, 144 Cal. App. 2d 294 (defendant opened door in his bare feet while registered occupant was asleep. Defendant did not appear to be an innocent bystander in a hotel room where a narcotics party was in progress).

Reasonable cause to arrest where officers watched door of defendant's residence and saw persons known to them to be drug addicts. When officers knocked on the door they heard a swift movement toward the bathroom.

**People v. Williams**, 175 A.C.A. 821.

On numerous occasions defendant who had had four or five convictions for narcotics offenses was observed with known narcotics users. Twice he was questioned and searched and failed to give a satisfactory explanation for substantial amounts of money on his person. The officers had information from informants that defendant was selling narcotics. Defendant was also observed with a known user, searching through a clump of Bermuda grass and when he emerged he had a piece of tinfoil in his hands.

Held this was reasonable cause.

**People v. Fabela**, 175 A.C.A. 577.

Defendant observed talking to known addicts ran up an alley as officers approached, and when finally stopped by the officers made a motion toward his pocket.

**People v. Taylor**, 174 A.C.A. 477.

Officers observed 'Red' talking with defendant who answered the associate's description given by informer. Red's hotel clerk told officers that defendant and Red were seen together. Red was arrested as he came out of his hotel with heroin on his person, but no narcotics or paraphernalia was found in the hotel room. Officers inferred Red had an associate who kept the supply. Held, probable cause to arrest defendant as Red's associate and search his person.

**People v. Thomas**, 156 Cal. App. 2d 117.

Just prior to defendant's arrest on a narcotics charge the arresting officer had participated in the arrest of one Garcia for sale of marijuana. When Garcia was arrested he was not in his car nor was the car at his house. When the officers located his car one-half block from Garcia's house, defendant and co-defendant were seated in it. Moreover, prior to Garcia's arrest for sale of marijuana, he had driven to defendant's house and someone had come from defendant's house and gotten into Garcia's car.

**People v. Adame**, 169 Cal. App. 2d 587;

**Montgomery v. Superior Court**, 146 Cal. App. 2d 622 (where defendant appeared at a prearranged place with a known peddler who had made arrangements to deliver narcotics);

**People v. Hood**, 150 Cal. App. 2d 197 (defendant was in the bathroom with co-defendant who had just thrown a package of heroin out the window).

The fact that defendant was in the company of one wanted for burglary justified precautionary search.

**People v. Brittain**, 149 Cal. App. 2d 201.

And see

**People v. Hollins**, 173 A.C.A. 110 (IV B 7 supra) and **People v. Ingle**, 53 A.C. 408 (Calif. Supreme Court Crim. 6564, Jan. 19, 1960) quoting *People v. Hollins*, 173 A.C.A. 110, 115: " 'Our strong devotion to the cherished principle that the citizen shall not be subjected to unreasonable treatment at the hands of the agents of society must be tempered with some reasonable appreciation of the facts of life and of the great dangers and difficulties which beset the officer of the law in his effort to protect the community from the blighting scourge of the narcotic traffic.' "



#### Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### B. Factors Considered

#### 11. ARRESTS INVOLVING AUTOMOBILES

See *People v. Hanley*, 156 Cal. App. 2d 544, where the court said by way of dictum that there is a material difference between arresting persons in automobiles and arresting persons in the sanctity of their homes (apparently recognizing the emergency factor).

##### a. Auto Accident

Following an automobile crash, a blood sample was taken from the driver whose breath indicated the presence of alcohol.

Held: The search was reasonable. *Rochin v. California*, 72 S. Ct. 205, 342 U.S. 165, does not apply.

**People v. Duroncelay**, 48 Cal. 2d 766;

**People v. Lewis**, 152 Cal. App. 2d 824.



## Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### B. Factors Considered

### 11. ARRESTS INVOLVING AUTOMOBILES

#### b. Traffic Violation

A traffic violation alone does not justify an arrest, nor a search of the vehicle which would be unrelated to the violation.

**People v. Blodgett**, 46 Cal. 2d 114;

**People v. Sanson**, 156 Cal. App. 2d 250;

**People v. Molarius**, 146 Cal. App. 2d 129 (defendant was arrested following an illegal "U" turn and advised that this arrest was for a traffic violation. Burglar tools were found in the rear seat. The automobile in which defendant was traveling was registered in the name of a man who had failed to appear in court upon two traffic violations and had been convicted of unlawful use of narcotics. There were no "holds" on him or on his vehicle).

But the traffic violation does justify stopping the driver, issuing a citation and asking questions pertinent to the violation such as requesting evidence of registration. If at that time the officer observes contraband in plain sight or suspicious conduct, he may be justified in a search.

**People v. Johnson**, 139 Cal. App. 2d 663 (driver stopped for erratic driving, appeared to be "under the influence of something which justified search revealing marijuana);

**People v. McFarren**, 155 Cal. App. 2d 383 (officer stopped defendant for going through a stop sign at 4:00 a.m. and observed a pistol under the front seat of a car).

Defendants stopped for traffic violations appeared to hide something.

**People v. Sanson**, 156 Cal. App. 2d 250;

**People v. Anders**, 167 Cal. App. 2d 65;

**People v. Zubia**, 166 Cal. App. 2d 620.



**Part IV**

**WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE  
ARRESTEE HAS COMMITTED FELONY**

**B. Factors Considered**

**11. ARRESTS INVOLVING AUTOMOBILES**

**c. Odor of Alcohol**

Defendant's blood sample was taken by approved medical means following an automobile crash where there was an odor of alcohol present. This was held a reasonable search.

**People v. Duroncelay**, 48 Cal. 2d 766;

**People v. Lewis**, 152 Cal. App. 2d 824;

**Breithaupt v. Abram**, 77 S. Ct. 408, 352 U.S. 434 (New Mexico).

And see IV B 17.





#### Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### B. Factors Considered

### 11. ARRESTS INVOLVING AUTOMOBILES

#### d. Unusual Conduct in Auto

The presence of two men in a parked car on a lovers' lane at night was reasonable cause for an investigation, and that after the men fled and were overtaken, the officers had reasonable cause to order them out of the car and seize a package on the front seat containing marijuana.

**People v. Martin, 46 Cal. 2d 106.**

Officers investigating a double-parked cab at two in the morning were justified in asking the occupants, who had been acting in an unusual manner, to get out of the cab for questioning. When they then observed the defendant secrete something behind the seat, they had reasonable grounds to believe he was hiding contraband and a search of the cab was justified.

**People v. Blodgett, 46 Cal. 2d 114.**

And see cases reported under IV B 4 where defendants' furtive actions justified arrest.



## Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### B. Factors Considered

#### 12. ARRESTS INVOLVING A PAROLEE

The home of a parolee may be searched in his absence, without a search warrant, where his parole officer has reasonable cause to believe that the parolee has violated his parole.

**People v. Denne**, 141 Cal. App. 2d 499;

**People v. Triche**, 148 Cal. App. 2d 198.

Where a parole officer was informed by the defendant's ex-wife that defendant had violated the conditions of his parole by moving without notifying the parole officer of his change of address and by having narcotics in his possession, such information, coupled with the officer's knowledge that defendant was on parole for a narcotics conviction, together with a confirmation of the change of address, justified the officer in making a search of defendant's abode and seizing contraband.

By accepting the privilege of parole, a prisoner consents to the broad supervisory and visitorial powers which his parole officer must exercise.

**People v. Robarge**, 151 Cal. App. 2d 660.

There was reasonable or probable cause for the arrest of defendant, a parolee, where a parole officer received information from one of her parolees that defendant had given her narcotics and that he was dealing in contraband, where the informant also provided defendant's exact address, his living arrangements, a description of his car and where he ordinarily could be found, and where the officer considered her informant trustworthy because previous information provided by this parolee had proved to be correct.

**People v. Hood**, 150 Cal. App. 2d 197.

Valid arrest and search made when officers received reliable confidential information that parolee was dealing in narcotics.

**People v. Contreras**, 154 Cal. App. 2d 321.

It is reasonable for an officer to question a narcotics parolee to determine if he was still on parole, where he was employed and where he lived.

**People v. Poole**, 174 A.C.A. 55.



## Part IV

# WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

## B. Factors Considered

### 13. NARCOTICS

#### a. Information Regarding Possession or Sale of Narcotics

*Held to Constitute Probable Cause.*

Where reliable information (or information which is corroborated) is given to officers that the defendant has narcotics in his possession and where the defendant is adequately described or a certain address given, there is probable cause to arrest and search defendant described and address given.

**People v. Sexton**, 153 Cal. App. 2d 803;

**People v. Salcido**, 154 Cal. App. 2d 520;

**People v. Dean**, 151 Cal. App. 2d 165;

**Trowbridge v. Superior Court**, 144 Cal. App. 2d 13;

**People v. Rixner**, 157 Cal. App. 2d 387;

**People v. White**, 167 Cal. App. 2d 794;

**People v. Dupee**, 151 Cal. App. 2d 364 (in addition officers had arrested defendant previously for narcotics violations);

**People v. Gorg**, 157 Cal. App. 2d 515 (officers knew of past record and saw known addicts going in and out of premises);

**People v. Green**, 152 Cal. App. 2d 886 (information that H had narcotics at his residence. G who was present with a knife in his hand at the time of H's arrest, was also properly arrested);

**Montgomery v. Superior Court**, 146 Cal. App. 2d 622 (information regarding a rendezvous for sale of narcotics to B led to arrest of defendant who met B);

**People v. Hanley**, 156 Cal. App. 2d 544 (car, defendants and location described and marijuana observed on floor boards of car);

**People v. White**, 159 Cal. App. 2d 586 (informer described defendant, told where he could be found and defendant observed carrying on various activities which looked like narcotic sales);

**People v. Robarge**, 151 Cal. App. 2d 660 (ex-wife of narcotics parolee told officer that parolee had narcotics in his possession);

**People v. Merino**, 151 Cal. App. 2d 594 (informer gave name and address of defendant and the source and amount of narcotics in defendant's possession);

**People v. Alaniz**, 149 Cal. App. 2d 560 (informer described defendant and his car and told officers defendant was dispensing from a particular location);

**People v. One 1949 Plymouth Sedan**, 148 Cal. App. 2d 220 (defendant's automobile described and location of activity at a

drive-in given. Officers observed defendant frequent drive-in and contact numerous people);

**People v. Rodriguez**, 175 A.C.A. 55 (informed that narcotics observed in defendant's bedroom and a narcotics party was being held at his residence).

Information that narcotics being dispensed from a specified address.

**People v. Augustine**, 152 Cal. App. 2d 264 (defendant a known user, observed leaving that address);

**People v. Chong Wing Louie**, 149 Cal. App. 2d 167 (officer smelled opium coming from the room);

**People v. Soto**, 144 Cal. App. 2d 294 (sniffing noises and conversations about narcotics came from the room).

But a description which is too general may not provide probable cause.

An inspector of the State Bureau of Narcotic Enforcement was told by a reliable informant that a Negro known as "Bozo", driving a 1953 Oldsmobile "98" convertible with a black top and light colored body was selling dolophine. The inspector stopped the State automobile in front of the defendant's vehicle, turned on the red spotlight and started to go around to the front of defendant's automobile with his badge in hand. The defendant backed up his automobile a few feet and then drove forward at a high rate of speed. The court indicated that the description and information from the informant would not have been enough standing alone to make an arrest since it was too general, but the attempted escape provided the necessary corroboration.

**People v. Dewson**, 150 Cal. App. 2d 119.

Where the reliable informer or confidential operator tells officers he has recently purchased narcotics from defendant, this is sufficient probable cause.

**People v. Sayles**, 140 Cal. App. 2d 657;

**People v. Martinez**, 169 Cal. App. 2d 242 (informer made a buy with money given him by the officers and returned to the officers with marijuana);

**People v. Cannon**, 148 Cal. App. 2d 163;

**People v. Luna**, 155 Cal. App. 2d 493;

**People v. Maddox**, 46 Cal. 2d 301;

**People v. Acosta**, 142 Cal. App. 2d 59 (probable cause for the issuance of a search warrant);

**People v. Ingle**, 53 A.C. 408 (Calif. Supreme Court Crim. 6564, Jan. 19, 1960) (undercover operator made three purchases of narcotics from G and D was later found in G's car with A who was a known peddler and had participated in the purchase).

*Insufficient Probable Cause. (No showing informer reliable.)*

Police officers were told by an informant, previously unknown to them, that someone occupying quarters in his apartment building had marijuana in his room. The officers saw defendant and another man enter the apartment empty-handed. Defendant opened the door, car-

rying a brown paper sack "in such a manner that it could be disposed of rapidly." Defendant was arrested and searched. In the bag was marijuana.

**People v. Goodo**, 147 Cal. App. 2d 7.

Arresting officers had received information from two sources (one of which had supplied information to the officers before, but there was no indication that the information was reliable). They observed heavy traffic in and out of the hotel room in question, and observed two known narcotic users entering the room, but there was no evidence that defendant was other than a casual bystander in the room. (Dietum, because search and arrest were presumed lawful where there was no evidence or lack of search or arrest warrant.)

**Hatjis v. Superior Court**, 144 Cal. App. 2d 426.

Officers had anonymous information that the lessee of a certain apartment possessed narcotics. They did not know the lessee. They went to the apartment, entered and arrested both the lessee and the defendant. The defendant's mere presence in the apartment did not justify his arrest.

**People v. Kitchens**, 46 Cal. 2d 260.

And, see

Cases under IV-C, *infra*.





Part IV

WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO  
BELIEVE ARRESTEE HAS COMMITTED FELONY

B. Factors Considered

**13. NARCOTICS**

**b. Officers Observe Exchange Taking Place**

*The following cases held to constitute probable cause for arrest.*

Officers went to an apartment because they suspected that a woman who entered it was engaged in an act of prostitution. One of the officers, looking through a hole in a door, observed defendant holding a rubber finger stall in his right hand and observed the defendant put two small balloons in the finger stall and hand them to someone, who gave the defendant a number of bills in exchange.

**People v. Ruiz**, 146 Cal. App. 2d 630.

Defendant, manager of a cafe which had a reputation for narcotics, went to the storeroom, came out, appeared to hand a white object to a man nearby and waved the man to leave by the rear door. The man complied and left rapidly.

**People v. Coleman**, 134 Cal. App. 2d 594.

Acting upon reliable information that defendant was selling narcotics, police officers staked out near defendant's house. They saw a car approach the house. Defendant entered back door, returned to car, and gave occupant a package. The same thing occurred in regard to a second car. Police officers pursued both cars and found marijuana. Officers came to house, arrested defendant, and searched the house and found marijuana.

**People v. Montes**, 146 Cal. App. 2d 530.

A police officer, while patrolling a district at 1:30 a.m., in which he knew narcotics were sold, saw defendant and another woman enter an alley and converse. He saw defendant place something in the other woman's hand. Then he heard a sound similar to the sound of a coin dropping. Defendant picked it up and handed it to the other woman, who reached into her purse and handed an object to defendant.

**People v. Brown**, 147 Cal. App. 2d 352.



## Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### B. Factors Considered

### 13. NARCOTICS

#### c. Arrestee Under the Influence of Narcotics

*The following fact situations have been held to constitute probable cause:*

Officers, patrolling a district reputed to be frequented by "pushers," peddlers and users of narcotics, were attracted by defendant's mannerisms and, during a conversation with him, noted that his eyes seemed "pin pointed and reddish" akin to one "under the influence of alcohol or narcotics." As he alighted from a police car, they observed a piece of newspaper protruding from his pants cuff, wrapped in such a way as to resemble, in the officers' opinion, a bundle of narcotics.

**People v. Rodriguez**, 140 Cal. App. 2d 865.

An automobile was being operated at 3 a.m., in a rapid, erratic manner, almost hitting the center island and a car in front. It thereafter became apparent to the officers that the driver of the apprehended car appeared to be under the influence of "something."

**People v. Johnson**, 139 Cal. App. 2d 663.

Officers had anonymous information that defendant was under the influence of narcotics. After gaining lawful admittance to defendant's room officers observed defendant to be in a sleepy condition. There was no odor of alcohol on his breath and the pupils of his eyes were pin-pointed and did not react to light.

**People v. Holland**, 148 Cal. App. 2d 933.

Police had the house of defendant, a known user of narcotics, under surveillance for a month. During this time, they saw known users enter his house. On one occasion, after seeing a man visibly under the influence of narcotics leave the house, police officers arrested the man and knocked on defendant's door. Defendant told them to come in. Police went in and saw heroin. Defendant was apparently under the influence of narcotics. A search produced more heroin.

**People v. Mendoza**, 145 Cal. App. 2d 279.

Probable cause to arrest and search existed where officer received information that a man named "Wilson" was dealing in heroin at the Rose Room; as the officer entered the Rose Room he saw defendant, whom he did not know, in the company of a known narcotics user. Defendant's eyes were red and he smelled of marijuana, and he admitted having used narcotics, though not that day.

**People v. Johnson**, 155 Cal. App. 2d 369.



WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE  
ARRESTEE HAS COMMITTED FELONY

B. Factors Considered

**13. NARCOTICS**

**d. Other Police Observations**

*Held to Constitute Probable Cause.*

Officer knew defendant to be a user of narcotics. He was told by an informant that defendant lived in a certain hotel room. The officer looked through a window and saw two small white packets which officer believed to be bindles of heroin.

**People v. Hen Chin**, 145 Cal. App. 2d 583.

For furtive acts in concealing contraband, see IV-B-4.

Detection of odor of opium.

**People v. Bock Leung Chew**, 142 Cal. App. 2d 400.

Attempted flight.

**People v. Edwards**, 142 Cal. App. 2d 419 (defendant seeking entry to hotel room where narcotics investigation in progress, attempted to flee at sight of officers).

**People v. Cisneros**, 166 Cal. App. 2d 100 (defendant ran from officers and dropped capsules resembling heroin).

**People v. Spicer**, 163 Cal. App. 2d 678 (defendant ran from officers and dropped marijuana).

Observing hypodermic marks on defendant's arms.

**People v. Rios**, 46 Cal. 2d 297;

**People v. Jaurequi**, 142 Cal. App. 2d 555.

Police officer in response to information received concerning the defendant, made the following observations: The defendant went up to a wall, lifted up the ice plant growing there, reached beneath the ice plant and then left. The officers found a package containing bindles of heroin underneath the ice plant. The bindles were sprinkled with fluorescent powder. Later that night the defendant returned, lifted the ice plant, reached beneath and walked back to his car. When the officers yelled that he was under arrest, defendant made a motion as if throwing an object. Defendant had the fluorescent powder on his hands. The bindles were later recovered in the back yard of an adjacent house.

**People v. Lawton**, 150 Cal. App. 2d 431.

Three addicts who had been previously arrested on several occasions told the officers that they had purchased narcotics from Hernandez at a certain address. Officers went to that address and saw defendant sitting in a Buick parked across the street. They knew that Hernandez did

not drive a Buick and that defendant was not Hernandez. They observed defendant drive around and park at the end of the alley which he had formerly entered, open the car door on the passenger side and appear to pick up some object from the base of a tree. The officers then arrested the defendant and found heroin in the car.

**People v. Tahtinen, 50 Cal. 2d 127.**

On numerous occasions defendant who had had four or five convictions for narcotics offenses was observed with known narcotics users. Twice he was questioned and searched and failed to give a satisfactory explanation for substantial amounts of money on his person. The officers had information from informants that defendant was selling narcotics. Defendant was also observed with a known user, searching through a clump of Bermuda grass and when he emerged he had a piece of tinfoil in his hands.

Held this was reasonable cause.

**People v. Fabela, 175 A.C.A. 577.**

*No Probable Cause.*

"T" had been indicted by the grand jury for the sale of narcotics. When "T" entered his automobile they placed him under arrest. After he was arrested, a bystander advised the officers that "T" lived in the adjacent apartment. The officers went to the apartment and entered without invitation and they found "D." They had no knowledge concerning "D." They searched the apartment and found narcotics.

Held the search of the apartment was not a proper incident to the lawful arrest of "T." "T's" arrest was on a public street, not upon any part of the premises in which the apartment was situated, and no probable cause to arrest "D."

**Hernandez v. Superior Court, 143 Cal. App. 2d 20.**

Defendant was believed to be dealing in narcotics and had been under surveillance by the police department. Defendant drove up to his house, got out of the car, walked over to another car and talked to the occupant. He walked across the street towards his residence, looked at something that was on the windshield of another car and then disappeared. A few minutes later he reappeared at the foot of the stairs from his upstairs apartment, looked up and down the street with his hands in his pockets and crossed the street to where the officers were standing. The officers identified themselves and asked the defendant to take his hands out of his pockets. He refused and backed off from the officers. The officer took a package of marijuana from the defendant's hand.

Though police officers have the right to interrogate a man on the streets at night, defendant's conduct in backing away and in refusing to take his hands out of his pockets did not constitute suspicious conduct.

**People v. Harvey, 156 Cal. App. 2d 516**

Officers observed defendant with parcels in her arm and left hand clinched in a fist. The officers grabbed defendant's wrist, identified

themselves and asked to see what she had in her left hand. She refused and the officers took a small rubber container filled with heroin from her left hand.

**People v. Brown, 45 Cal. 2d 640.**

Officers had a warrant for the search of Jack Yee and premises. On the premises they noted the defendant playing with a Yo-yo. They asked him if his name was Yee and he said, "Yes." Two others also said their name was Yee. There was no probable cause to search defendant for narcotics, as defendant not mistaken for Jack.

**People v. Yet Ning Yee, 145 Cal. App. 2d 513.**

The officers observed a woman sitting in a car in an industrial area at night, who stated she was waiting for her boy friend to return. As defendant approached the car the officers questioned him. He said he had been to the liquor store to purchase cigarettes and that he had been "busted" before. He appeared nervous. When the officers said they were going to search him the defendant ran and threw away some marijuana.

There was no probable cause to arrest because defendant was lawfully on the streets and had not committed any suspicious acts prior to his flight. The flight was caused by officers' threat of illegal search.

**Gascon v. Superior Court, 169 Cal. App. 2d 356.**





WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE  
ARRESTEE HAS COMMITTED FELONY

B. Factors Considered

**14. BOOKMAKING**

*Probable Cause Found.*

Probable cause to arrest for bookmaking where defendant accepts a bet by telephone.

- People v. Bradley**, 152 Cal. App. 2d 527;
- People v. Miller**, 143 Cal. App. 2d 558;
- People v. Hudak**, 149 Cal. App. 2d 88;
- People v. Sakelaris**, 154 Cal. App. 2d 244;
- People v. Fischer**, 49 Cal. 2d 442;
- People v. Anderson**, 145 Cal. App. 2d 201;
- People v. Ferrera**, 149 Cal. App. 2d 850;
- People v. Graff**, 144 Cal. App. 2d 199 (defendant overheard placing bet);
- People v. King**, 140 Cal. App. 2d 1 (informant placed a bet with defendant by telephone in officer's presence);
- People v. Follins**, 173 A. C. A. 900;
- People v. Hames**, 173 A. C. A. 762.

Officers observe bookmaking paraphernalia of defendant engaging in bookmaking activities.

- People v. Cahan**, 150 Cal. App. 2d 786;
- People v. Martin**, 45 Cal. 2d 755; (officers observed telephones, blackboards, chalk, scratch sheets and a wet rag);
- People v. Gusukuna**, 152 Cal. App. 2d 135 (defendant gave officer results of a race and officer observed bookmaking paraphernalia from the door).

Probable cause based on information.

- People v. Prewitt**, 52 A. C. 342 (informer's name unknown but voice recognized by officer);
- Willson v. Superior Court**, 46 Cal. 2d 291 (officers observed defendant in a bar near a telephone with a scratch pad, pencil and slips of paper in her hand which she attempted to conceal, thus corroborating anonymous information that defendant was engaged in bookmaking);
- People v. Easely**, 148 Cal. App. 2d 565 (anonymous information corroborated by observations of stream of people entering defendant's residence for brief period and observing bookmaking paraphernalia through open door);
- People v. Steinberg**, 148 Cal. App. 2d 855 (information corroborated by officer observing defendant talking on telephone. When defendant saw officer, he rose from his desk with papers in his hand and moved speedily away);

**People v. Hames**, 173 A. C. A. 762 (informant tells officers bookmaking being conducted by male Caucasian named "Wally" in a certain hotel room. From outside door of room officers heard defendant accept bet);

**Thorp v. Dept. of Alcoholic Beverage Control**, 175 A.C.A. 523 (investigator observed person operating licensed barroom accept bets and heard him tell a patron he was making the horses).

*No Probable Cause.*

Officers went to defendant's record shop in search of another man whom they had arrested a day before at such shop for bookmaking. They looked through a hole in the door and saw defendant, whom they knew had been a bookmaker in the past. Defendant was standing behind the desk with a pencil in his hand and some pads of paper in front of him on which there was writing.

The fact that defendant had been a bookmaker in the past and the fact that another bookmaker had been on the premises the day before did not constitute reasonable cause to believe that defendant was bookmaking. His conduct was consistent with lawful business practices.

**People v. Sanders**, 46 Cal. 2d 247.

An arrest based on information secured through illegally installed microphones is not lawful.

**People v. Cahan**, 44 Cal. 2d 434.

For three weeks defendant was observed reading racing section of paper and contacting ten to fifteen people per day. His arrest on a vagrancy charge was a subterfuge to obtain evidence of bookmaking and was illegal.

**People v. Wilson**, 145 Cal. App. 2d 1.

## Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### B. Factors Considered

#### 15. VAGRANCY

##### *Probable Cause*

Officers had the right to arrest defendants who were asleep in a car parked at a curb at 7:00 a.m., where there were young girls in the car who appeared to be under the age of 18, and where on questioning, the defendants said they had started from Oregon and had just returned from Mexico. Clothes were strewn about in the car, and the clothes worn by the occupants appeared to have been slept in.

**People v. Simpson**, 170 Cal. App. 2d 524.

Defendant was seen at midnight in the vicinity where a murder had been committed three weeks earlier. He made a number of starts in different directions, came back to the corner and when he saw officers, turned and walked in another direction. Officers approached him, saw the blade of a table knife protruding from his pocket, and took the knife from him. They questioned him on his reason for being in the area and he gave conflicting stories. He was arrested for vagrancy, searched and a 12-inch pipe was removed from his trousers, which was relevant in connection with defendant's later confession that he had struck the victim with a piece of pipe.

**People v. Duncan**, 51 Cal. 2d 523.

##### *No Probable Cause*

Prior to the arrest the officer had been told by an anonymous informant that the defendant was a known thief and dealt in narcotics. The officer had seen the defendant sitting in an automobile talking to a known addict about a month prior to the arrest. On the night of the arrest, at about 2 a.m., the officer observed defendant in the doorway of a liquor store talking to another person; every few moments the defendant left the doorway, looked down the street and returned to the doorway. The officer asked the defendant what he was doing and defendant answered that he was waiting for a friend. After placing him under arrest for vagrancy, the officer told the defendant to take his hand out of his pocket and when defendant refused to do so, the officer grabbed his hand and found a marijuana cigarette.

There was insufficient probable cause to arrest for vagrancy since the defendant's conduct was consistent with innocence.

**People v. Harris**, 146 Cal. App. 2d 142.

For three weeks defendant was observed reading racing section of paper and contacting ten to fifteen people per day. His arrest on a vagrancy charge was a subterfuge to obtain evidence of bookmaking and was illegal.

**People v. Wilson**, 145 Cal. App. 2d 1.



WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE  
ARRESTEE HAS COMMITTED FELONY

B. Factors Considered

**16. BURGLARY, ROBBERY, AND THEFT**

*Arrests and searches lawful in the following cases:*

The officers were informed that the defendant entered a store at night with a fierce look on his face and without answering the clerk went back into the living area of the store where he was told not to go. The defendant appeared to be under the influence of a narcotic due to his incoherent answers to questions propounded by the officers.

**People v. Paul**, 147 Cal. App. 2d 609.

Defendant was found sitting in his car, with the motor running, at 4:00 a.m., in front of a store. He attempted flight as the police approached. (Dietum, since no objection made at trial.)

**People v. Shannon**, 147 Cal. App. 2d 300.

Defendant was seen walking down a dark sidewalk at night, with clothes wrapped in a bundle. He started to walk away as officers approached him; first said that the clothes were his; then gave evasive and conflicting answers concerning the clothes. Officers had numerous reports of burglaries in the area.

**People v. West**, 144 Cal. App. 2d 214.

Officers arresting defendant on traffic warrant, recognized defendant as a known burglar, having seen his name in sheriff's file. Officers, through car window, saw articles of clothing in back seat.

**People v. Wright**, 153 Cal. App. 2d 35.

Where officers knew recent burglaries had been committed in neighborhood, they were justified in stopping defendant who was walking along the street at 8:00 p.m. with a flashlight and gloves protruding from his pocket. Officers called out three times for defendant to stop before he complied. Defendant could give no identification and gave a nonexistent address.

**People v. Ambrose**, 155 Cal. App. 2d 513.

An arrest was justified without a warrant where defendant's mistress who occupied the same apartment with the defendant told the officers that defendant had brought home property, which he told her was stolen, and had it at the apartment. She took the officers to the apartment and admitted them. Once in the apartment, the officers observed some stolen property in plain sight. A further search revealing other stolen property was lawful.

**People v. Howard**, 166 Cal. App. 2d 638.

Two burglary victims described defendant to officers as small, wearing dark jacket and light colored trousers. Defendant was observed in

the area of the burglaries a short time later wearing clothing answering the description. On being questioned, defendant refused to give his name and address, and failed to give a reasonable explanation of his presence in the area.

**People v. Romero**, 156 Cal. App. 2d 48.

Circumstances indicated a burglary was an "inside job" and defendant, an employee of the burglarized bowling alley, failed to report to work the morning following the burglary.

**People v. Felli**, 156 Cal. App. 2d 123.

Officers arrested C, known to them as an addict and thief and wanted as a burglary suspect, beside an automobile. C told the officers there was some "hot stuff" and guns in the car. Officers later observed the defendant in the car. They ordered him out and observed a gun under the front seat and some white powder and a hypodermic needle in the glove compartment.

The court said that C was not a reliable informant because he had not given the police information before, but it was reasonable for them to order defendant out of the car and then to make a precautionary search for weapons.

**People v. Witt**, 159 Cal. App. 2d 492.

Officers received information that defendant's roommates were arrested for robbery and that there had been four active participants in the robbery. The officers knocked on the defendant's door, identified themselves and asked defendant if they could search the room. The officers were inside the doorway and had searched defendant for weapons before they asked permission to search. Defendant told them there was a pair of brass knuckles under the bed but that he had found them in the room when he moved in.

**People v. Bouchard**, 161 Cal. App. 2d 302.

An armed robbery of a liquor store was reported and Q told a deputy sheriff that he had witnessed a yellow Cadillac with red wheels, license GC4, make a U-turn, park in front of his window, and the men in the car got out and were arguing about a gun, and it appeared to him a forcible exchange of guns had taken place. Arresting officers found the car and saw four men get in it.

**People v. Vaughn**, 155 Cal. App. 2d 596.

Defendant fitted the description given by the victim of an armed robber and had been in the vicinity when the crime was committed. When defendant prepared to leave town, he was arrested and searched.

**People v. Spellings**, 141 Cal. App. 2d 457;

**People v. Villarico**, 140 Cal. App. 2d 233.

Defendant was observed by a sales clerk in a men's store pushing the hangers holding men's suits back and forth on the rack, and then walking away "hitching up" her skirt. The clerk pointed out the de-

fendant to the officers and told them that she had merchandise from the store.

**People v. Williams, 169 Cal. App. 2d 400.**

On night of reported robbery, defendants in automobile in vicinity of robbery, made a left turn on seeing police car. Officers were justified in stopping defendant to investigate and officers observed tools, radio, glove and flashlight on back seat.

**People v. Carnes, 173 A.C.A. 625.**





#### Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### B. Factors Considered

#### 17. DRUNKENNESS

Police officer, investigating parked car early in the morning, seized defendant lying on the front seat and discovered that his breath was alcoholic and that he staggered badly. The officer was then entitled to impound the car and search it. Marijuana found in the car was admissible in evidence. An officer is not required to close his eyes to contraband merely because it is disconnected with the initial purpose of the search.

**People v. Ortiz**, 147 Cal. App. 2d 248. (See cases under IV-B-11-c, supra.)

Although there was no evidence of odor of alcohol, defendant was properly arrested where his suspicious actions on the street gave him the appearance of being drunk. Where officers searched him and found narcotics, the search was proper.

**People v. Smith**, 153 Cal. App. 2d 190.

Probable cause to arrest where defendant appeared to be intoxicated and upon being requested for identification, produced a Navy ID card which disclosed that defendant was a minor. A subsequent search of defendant's pocket revealing marijuana was lawful.

**People v. Evans**, 175 A.C.A. 304.



**Part IV**

**WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE  
ARRESTEE HAS COMMITTED FELONY**

**B. Factors Considered**

**18. COUNTERFEITING**

Officers went to defendant's apartment looking for "L," identified themselves and were invited to enter. While one of the officers was talking to defendant the other looked into another room and observed counterfeiting equipment used by defendant.

There was reasonable cause for the police officers to believe defendant had committed a felony. Their entry into the apartment was lawful.

**In re Dixon, 41 Cal. 2d 756, 761.**



#### Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### B. Factors Considered

#### 19. SEX OFFENSES

An offense was committed in the presence of an officer where officer overheard a sailor's conversation with B in which the sailor was invited to a house for purposes of prostitution, and where the officer saw the sailor enter the house. The officer was justified in entering the house and arresting B.

**People v. Cahill**, 163 Cal. App. 2d 15.

Officers from past observation and information suspected F of prostitution. They observed F and defendant leave a restaurant and go to a hotel room without stopping at the desk. Officers knocked on the door, identified themselves and asked to talk to them. F opened the door and sat down at the bed partially disrobed. F told the officers she knew the defendant only as "Smiley."

Defendant was nervous and dropped some things on the floor. Officer saw a small white article (heroin). Room was then searched and heroin found on a spoon.

Held, F consented to the entry, the officers did not have to close their eyes to contraband, and the search of the room was proper.

**People v. Smyre**, 164 Cal. App. 2d 218.

For facts constituting probable cause for arrest in abortion, see

**People v. Daily**, 157 Cal. App. 2d 649;

**People v. Ames**, 151 Cal. App. 2d 714;

**People v. Ramsey**, 157 Cal. App. 2d 178.



## Part IV

# WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

## C. Informer Cases

### 1. RELIABLE INFORMATION

#### a. Reliable Confidential Informant

An arrest may be made solely on the advice of a reliable confidential informant.

**People v. Gonzales**, 141 Cal. App. 2d 604, 606;

**People v. Hood**, 150 Cal. App. 2d 197, 200;

**People v. Montes**, 146 Cal. App. 2d 530, 532;

**People v. Garnett**, 148 Cal. App. 2d 280;

**People v. Penson**, 148 Cal. App. 2d 537;

**People v. Dean**, 141 Cal. App. 2d 165, 167;

**People v. Sexton**, 143 Cal. App. 2d 803, 804;

**People v. Moore**, 154 Cal. App. 2d 43, 45;

**People v. Contreras**, 154 Cal. App. 2d 321;

**People v. Salcido**, 154 Cal. App. 2d 520;

**People v. Rixner**, 157 Cal. App. 2d 387;

**People v. White**, 159 Cal. App. 2d 586;

**People v. Richardson**, 51 Cal. 2d 445;

**People v. Boyd**, 162 Cal. App. 2d 332.

Reasonable cause to justify an arrest may consist of information obtained from others and is not limited to evidence that would be admissible at the trial on the issue of guilt.

**People v. Boyles**, 45 Cal. 2d 652;

**People v. Smith**, 50 Cal. 2d 149;

**People v. Barnett**, 156 Cal. App. 2d 803;

**People v. Johnson**, 157 Cal. App. 2d 555;

**People v. Gorg**, 157 Cal. App. 2d 515.

Information from reliable informant may justify an arrest and search without production of the informant as a witness.

**People v. Herman**, 163 Cal. App. 2d 821.

#### *Reliable Informant Defined*

A reliable informant means a person whose information has in the past led the police to valid suspects.

**People v. Dewson**, 150 Cal. App. 2d 119, 128.

An informant was reliable where officer had received information on two prior occasions, had investigated and observed two sales of narcotics. He did not make arrest in those cases before the arrest was made in the present case.

**People v. Barnett**, 156 Cal. App. 2d 803, 806.

The trial court could find that an informant was reliable where the arresting officer had known the informant for one year. The fact that the informant was a foreman with a substantial firm was evidence of



his reliability. Moreover the detailed nature of information given and completeness of description of accused and his *modus operandi* gave the information an aspect of intrinsic reliability.

**People v. Arter**, 169 Cal. App. 2d 439.

Information from a parolee was reliable where previous information given the parole officer had proven correct.

**People v. Hood**, 150 Cal. App. 2d 197.

No showing of reliability of informer but description of defendant given lent reliability to the information. The informer was no mere tipster. He was a known confidential informer.

**People v. Holguin**, 145 Cal. App. 2d 520;

**People v. Howard**, 173 A.C.A. 903 (information from two other defendants who were under arrest provided probable cause to arrest defendant Howard).

Evidence that an informant was reliable may consist, among other things, of the identity of the informant and the officer's past experience with him.

**People v. White**, 159 Cal. App. 2d 586, 590.

Informer reliable where officer recognized his voice although he did not know his name.

**People v. Prewitt**, 52 A.C. 342.

Informer reliable where officer had made one previous arrest about a month before on basis of her information and on another occasion had checked her information against other information and found it to be correct.

**People v. Rodriguez**, 175 A.C.A. 55.

Courts will not assume that police officers make use of fictitious informants.

Defendant's assumption that police officers would, to suit their own convenience, make use of fictitious informants, is unauthorized and contrary to statutory presumptions that an official duty has been regularly performed and that the law was obeyed. (Code of Civil Procedure, § 1953, subds. 15, 33.) An officer's good faith testimony that he acted on the information of a confidential informant and that such informant was reliable, is a sound basis for the arrest and search.

**People v. Garnett**, 148 Cal. App. 2d 280;

**Lorenzen v. Superior Court**, 150 Cal. App. 2d 506, 510;

**People v. Prewitt**, 52 A.C. 342.

The arresting officer need only convince the trial judge of the reliability of the informant.

The *informant's* credibility is not in issue with respect to the reasonable grounds for making an arrest. Only the credibility of the *officer* is in issue before the court and it is the officer's credibility and the soundness of his reasons for relying upon his informant that must

impress the court before it can determine that the officer was authorized in making the arrest.

**People v. Dean**, 151 Cal. App. 2d 165, 167;  
**Lorenzen v. Superior Court**, 150 Cal. App. 2d 506, 510;  
**People v. Barnett**, 156 Cal. App. 2d 803, 806;  
**People v. White**, 159 Cal. App. 2d 586;  
**People v. Boyd**, 162 Cal. App. 2d 332;  
**People v. Weathers**, 162 Cal. App. 2d 545;  
**People v. Arter**, 169 Cal. App. 2d 439.

#### *Question of Fact*

The weight to be accorded the information on which the arresting officer acts is a question of fact for the trial court.

**Lorenzen v. Superior Court**, 150 Cal. App. 2d 506;  
**People v. Gonzales**, 141 Cal. App. 2d 604;  
**People v. Arter**, 169 Cal. App. 2d 439.

The weight to be accorded information on which officers act in making an arrest is to be determined by the trial court in the exercise of a sound discretion.

**People v. Moore**, 154 Cal. App. 2d 43;  
**People v. Rixner**, 157 Cal. App. 2d 387, 390;  
**People v. Arter**, 169 Cal. App. 2d 439.

The following cases involving reliable information held to constitute probable cause.

#### *Narcotic Cases* (See cases under IV-B-13)

Reliable informer gives officer information concerning possession or sale of narcotics by a designated defendant at a certain address.

**Trowbridge v. Superior Court**, 144 Cal. App. 2d 13;  
**People v. Garnett**, 148 Cal. App. 2d 280;  
**People v. Guerrero**, 149 Cal. App. 2d 133;  
**People v. Dean**, 151 Cal. App. 2d 165;  
**People v. Sexton**, 153 Cal. App. 2d 803;  
**People v. Velis**, 172 A.C.A. 577;  
**People v. Baker**, 170 Cal. App. 2d 240;  
**People v. Vice**, 147 Cal. App. 2d 269;  
**People v. Rollins**, 161 Cal. App. 2d 560;  
**People v. Hen Chin**, 145 Cal. App. 2d 583 (officers saw objects resembling narcotic bindles through window);  
**People v. Dupee**, 151 Cal. App. 2d 364 (defendant arrested previously for narcotics violations);  
**People v. Johnson**, 157 Cal. App. 2d 555 (defendant described as wearing gray hat, orange shirt, limping and standing in front of certain hotel);  
**People v. Moore**, 154 Cal. App. 2d 43 (nine prior arrests made on basis of informant's information);  
**People v. Baltazar**, 159 Cal. App. 2d 595 (information that defendant selling narcotics in barbershop and had just re-

- ceived a shipment from Mexico. Similar information given by a second informer on prior occasions);
- People v. White**, 159 *Cal. App. 2d* 586 (informer an addict whose information had led to five prior arrests, gave description of defendant and told where he could be found with heroin. Second informer not personally known to officers corroborated);
- People v. Augustine**, 152 *Cal. App. 2d* 264 (a known user seen leaving the apartment);
- People v. Montes**, 146 *Cal. App. 2d* 530 (observed defendant give packages to occupants of two cars);
- People v. Diggs**, 161 *Cal. App. 2d* 167 (informant purchased marijuana with marked bills);
- People v. Boyd**, 162 *Cal. App. 2d* 332 (officer observed old needle marks on defendant's arm);
- People v. Gorg**, 157 *Cal. App. 2d* 515 (officers knew of defendant's past record and observed addicts entering premises);
- People v. Hood**, 150 *Cal. App. 2d* 197 (information by parolee included defendant's exact address, living arrangement and description of car);
- People v. Andrews**, 153 *Cal. App. 2d* 333 (information that defendant would pick up narcotics);
- People v. Herman**, 163 *Cal. App. 2d* 821 (information that defendant was going to make a delivery of narcotics coupled with past observations of narcotic addicts entering defendant's residence);
- People v. Thomas**, 156 *Cal. App. 2d* 117 (description of defendant and associate);
- People v. Alaniz**, 149 *Cal. App. 2d* 560 (defendant and his car described, and officer saw needle marks on defendant's arms).

Reliable information that defendant was engaged in bookmaking provided probable cause to arrest (and see cases under IV B 14).

- People v. Steinberg**, 148 *Cal. App. 2d* 855;
- People v. Preston**, 160 *Cal. App. 2d* 545;
- People v. Penson**, 148 *Cal. App. 2d* 537 (particular address and portion of premises described);
- Lorenzen v. Superior Court**, 150 *Cal. App. 2d* 506 (defendant's mode of operation in selling pool tickets, car, location of activities and address described);
- People v. King**, 140 *Cal. App. 2d* 1 (telephone number given and informant placed bet in officer's presence).

Information from informer not proven reliable may justify a precautionary search.

**People v. Witt**, 159 *Cal. App. 2d* 492.

*Reliable information insufficient to constitute probable cause because description too general.*

Where an inspector of the State Bureau of Narcotic Enforcement was told by a reliable paid informant that a Negro known as "Bozo," driving a 1953 Oldsmobile "98" Convertible with a black top and light colored body was selling dolophine; substantially similar information was given by a second informant, except that neither the name of the individual nor the particular narcotic was given. The court said that "Bozo's" description and his address were not given, nor was it indicated that his activities were confined to any particular location in the City of San Francisco. The trial court took judicial notice that the described automobile was a common sight. The court said if the officers had sufficient probable cause solely on the basis of the information they would have sufficient cause to arrest any Negro anywhere in San Francisco driving a car similar to the one described.

**People v. Dewson**, 150 Cal. App. 2d 119, 128.



## Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### C. Informer Cases

##### 1. RELIABLE INFORMATION

###### b. Police Officers and Radio Broadcasts

A police officer may make an arrest on information received by him when the officer has reason to believe the information is reliable, and this includes information from other officers, or information received from police radio broadcasts.

Information received from all-points bulletins and police radio broadcasts is reliable and will justify an arrest.

**People v. Hupp**, 61 Cal. App. 2d 447;

**People v. Borbon**, 146 Cal. App. 2d 315 (defendant answered description of robber);

**People v. Littlejohn**, 148 Cal. App. 2d 786 (defendant and car answered description in a car theft);

**People v. Cartier**, 170 Cal. App. 2d 613 (teletype from another police department describing defendant as burglary suspect);

**People v. One 1956 Porsche Convertible**, 175 A.C.A. 277 (in response to all unit alarm describing car and narcotics suspects, officers could stop car and examine arms of occupants for puncture marks).

Where information is given by a reliable informant to one officer who in turn relayed it to the arresting officer, the latter is reasonably justified in relying on the information because it came from an official source.

**Montgomery v. Superior Court**, 146 Cal. App. 2d 622;

**People v. Gorg**, 157 Cal. App. 2d 515;

**People v. Bates**, 163 Cal. App. 2d 847;

**People v. Weathers**, 162 Cal. App. 2d 545 (information relayed by juvenile officer corroborated).

The fact that the information does not come from the informant directly to the officer making the arrest does not prevent reliance on its trustworthiness since it reaches the arresting officer through official channels.

**People v. Hood**, 150 Cal. App. 2d 197 (information received from a parolee concerning defendant's possession of narcotics. The parole officer relayed the information to the arresting officer);

**People v. Triche**, 148 Cal. App. 2d 198 (information relayed by parole officer).

The officer who relays the information is a reliable informant and his information alone will justify an arrest.

**People v. Ames**, 151 Cal. App. 2d 714 (information from abortion victims relayed to an arresting officer by an investigator and a fellow officer).

Must the officer relaying the information testify?

In *People v. Harvey*, 156 Cal. App. 2d 516, it was said that if a superior police officer has reliable information which would justify his making an arrest himself, he can delegate the making of an arrest to a subordinate. But to permit the subordinate to justify the arrest on the superior's unsworn statement to the subordinate, would be hearsay on hearsay and would permit the manufacture of reasonable grounds for the arrest.

But contrast

*People v. Richardson*, 51 Cal. 2d 445, 448, where the court refused to consider defendant's claim that the information allegedly given by the informer could not be relied upon to justify the search and seizure because the arresting officer learned of it indirectly through another officer who did not testify. The court said that the arresting officer's testimony was sufficient to justify the determination of reasonable cause.

## Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### C. Informer Cases

#### 1. RELIABLE INFORMATION

##### c. Information From Ordinary Citizen

The reasonableness of the arrest upon information of a citizen will depend primarily upon the officer's estimate of the credibility of the citizen.

In *People v. Brite*, 9 Cal. 2d 666, 686, police officers were informed that an apparently felonious assault was made upon two citizens, and were accompanied by the citizens to the camp of the defendants. The arrest was held to be valid.

Officers received information from a locksmith that he had picked a lock and opened a safe for the defendants in order that the defendant could steal some jewelry. Held this information was sufficient to create a reasonable suspicion that defendants had committed a felony and this justified their arrest and search of their office. (Dictum, because defendants convicted on other illegally obtained evidence, and judgment of conviction was reversed.)

*People v. Jager*, 145 Cal. App. 2d 792.

Probable cause to arrest for burglary of liquor store where clerk testified she had told officers that defendant entered store late at night, with a fierce look on his face and without answering went back into living area of store, and that he appeared to be under influence of narcotics.

*People v. Paul*, 147 Cal. App. 2d 609.

Information from the prosecuting witness to officers that defendant had aborted her furnished probable cause for arrest.

*People v. Daily*, 157 Cal. App. 2d 649.

Where a sales clerk told officers that defendant had left the store with merchandise and that she had observed defendant push men's suits back and forth on the rack and finally walk away "hitching up her skirt," court held police were entitled to act on information received from the complaining witness.

*People v. Williams*, 169 Cal. App. 2d 400.

Victim of robbery refused to positively identify defendant but said he looked like the robber. When defendant was observed preparing to leave town he was arrested.

*People v. Spellings*, 141 Cal. App. 2d 457.

Two burglary victims described burglar. Defendant, fitting description, was observed in area of burglaries a short time later.

*People v. Romero*, 156 Cal. App. 2d 48.





## Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### C. Informer Cases

#### 1. RELIABLE INFORMATION

##### d. Informant Known to Police Officers

Police had information that a girl called "Frankie," wearing a brown sweater, levis, and having the appearance of a boy, was selling heroin in front of a certain cafe. Police went to the cafe, saw a girl answering this description who answered to the name "Frankie." She was arrested and searched, and found to be in possession of heroin.

Dictum: there was probable cause. There was no showing that the informant was reliable, but he was not a mere "tipster." He was a known confidential informant. The identification of the girl was so accurate as to lend reliability to the information.

**People v. Holguin**, 145 Cal. App. 2d 520.

A police officer contacted a confidential informant whom the officer had known for ten years and had been in direct contact with on and off for the past three or four years when the informant was not in jail. The informant took the officers to the house and told them that a known narcotic pusher was living there and had approximately two ounces of heroin in the house at that time. The officers had known the defendant previously by nickname from a source other than the informant. The officers entered the house and placed the defendant under arrest.

Held: There was probable cause to arrest the defendant because the officers had specific, positive and definite information regarding the name of the defendant, the source of the narcotics, the amount of the narcotics and the address of the defendant, and the officers had some knowledge of the defendant from another source.

Note: There was no testimony that the officers had ever made an arrest on the basis of this informant's information.

**People v. Merino**, 151 Cal. App. 2d 594.

A parole officer was informed by defendant's ex-wife that defendant had changed his address without notifying the parole officer and had narcotics in his possession. The officer verified the change of address and knew that the defendant was on parole for a narcotics conviction.

The court pointed out that the informant was not an unknown informant and that the officer had knowledge of defendant's prior narcotics conviction. It was not necessary to show that information which had proved reliable had been received from this informant on prior occasions.

**People v. Robarge**, 151 Cal. App. 2d 660.

Officers received information from "an operator working for them" (no evidence that informant was reliable) that he had purchased narcotics from defendant. Officers had knowledge of defendant's prior

addiction, and had received previous information that defendant was possibly selling narcotics. There was probable cause for arrest.

**People v. Sayles**, 140 Cal. App. 2d 657.

An informant whose voice is recognized may be considered reliable so that information given by him may provide probable cause, even though the officer does not know the informant's identity.

**People v. Prewitt**, 52 A.C. 342.

Part IV

WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE  
ARRESTEE HAS COMMITTED FELONY

C. Informer Cases

**2. ANONYMOUS INFORMATION**

Information from an anonymous informer is relevant to the issue of reasonable cause, but an arrest may not be based solely on such information. It must be substantiated by evidence that would justify the conclusion that reliance on the information was reasonable. Such evidence may consist of similar information from other sources, or personal observations of the police (even though such observations alone might not constitute reasonable cause).

**Willson v. Superior Court**, 46 Cal. 2d 291;  
**People v. Thymiakas**, 140 Cal. App. 2d 940;  
**People v. Moore**, 141 Cal. App. 2d 87;  
**People v. Easley**, 148 Cal. App. 2d 565;  
**People v. Soto**, 144 Cal. App. 2d 294;  
**People v. Cannon**, 148 Cal. App. 2d 163.



WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE  
ARRESTEE HAS COMMITTED FELONY

C. Informer Cases

**2. ANONYMOUS INFORMATION**

**a. Alone**

*Generally anonymous information, or information not shown to be reliable, will not constitute probable cause for arrest.*

The officers had anonymous information that the renter of the apartment was in possession of narcotics; they went to the apartment, secured the cooperation of the manager who induced the renter of the apartment to open the door. The defendant's mere presence in the apartment did not justify his arrest and search unless the officers were justified in arresting the renter and reasonably mistook defendant for him.

**People v. Kitchens**, 46 Cal. 2d 260.

Officers received information from an anonymous informant and had heard on previous occasions that the defendant was a user and peddler of narcotics. The officers went to the address where the defendant lived, identified themselves and heard retreating footsteps.

**People v. Thymiakas**, 140 Cal. App. 2d 940.

Police officers were told by an informant, previously unknown to them, that someone occupying quarters in his apartment building had marijuana. At 10:15 p.m., the officers saw defendant and another man enter the apartment empty-handed. After waiting five minutes, officers were about to knock on the door when defendant opened the door, carrying a brown paper sack "in such a manner that it could be disposed of rapidly." Defendant was arrested and searched and marijuana was found in the paper sack.

Information from a previously unknown person, plus the possession of an ordinary brown paper bag, was insufficient to allow an arrest or a search. There was no pressing emergency.

**People v. Goodo**, 147 Cal. App. 2d 7.

But contrast the following:

Officer had received confidential information on several occasions that defendant had heroin in her bedroom and that she and a friend were selling narcotics. There was no testimony as to the reliability of the informant or whether officers knew the informant. Defendant and friend were arrested in defendant's back yard. A search of the bedroom followed with defendant's consent.

Held arrest and search lawful. Information was not mere surmise that defendant possessed narcotics but that she would have contraband on her person or in her bedroom and informant supplied officer with

this information. After lawful arrest, the police could search the premises under her control, including her bedroom.

**People v. Guy**, 145 Cal. App. 2d 481.

It is only in the case of a pressing emergency that an arrest or search without a warrant may be justified based upon information secured from an anonymous informant, or from an informant not known to the officer to be reliable.

**People v. Thymiakas**, 140 Cal. App. 2d 940;

**People v. Bates**, 163 Cal. App. 2d 847.

## Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### C. Informer Cases

#### 2. ANONYMOUS INFORMATION

##### b. Corroborated

In the following cases information from an anonymous informant or one which had not previously been proven reliable, was corroborated sufficiently to provide probable cause.

##### *Bookmaking cases*

Police officers received information that an apartment occupied by defendant was a bookmaking establishment. The police officer placed a bet on a horse race by calling a telephone number at the apartment designated by the informant.

**People v. Hudak**, 149 Cal. App. 2d 88;

**People v. Sakelaris**, 154 Cal. App. 2d 244;

**People v. Miller**, 143 Cal. App. 2d 558;

**People v. Ferrera**, 149 Cal. App. 2d 850;

**People v. Bradley**, 152 Cal. App. 2d 527;

**People v. Hames**, 173 A.C.A. 762 (officers heard defendant accept a bet).

Police observed bookmaking paraphernalia.

**People v. Easley**, 148 Cal. App. 2d 565 (and numerous people entering and leaving);

**Willson v. Superior Court**, 46 Cal. 2d 291 (defendant observed in bar near telephone with scratch pad and slips of paper in hand).

Information concerning weapons corroborated.

**People v. Jiminez**, 143 Cal. App. 2d 671 (as officers approached defendant leaned toward seat of car);

**People v. Witt**, 159 Cal. App. 2d 492 (observed gun under front seat while making a precautionary search).

Information concerning possession or sale of narcotics corroborated.

Defendant appeared to be under influence of narcotics.

**People v. Holland**, 148 Cal. App. 2d 933;

**People v. Alcala**, 169 Cal. App. 2d 468 (eyes dilated, speech incoherent, appeared nervous);

**People v. Lopez**, 169 Cal. App. 2d 344 (glassy eyes and sniffling);

**People v. Alesi**, 169 Cal. App. 2d 758 (pupils pin-pointed, light reaction poor, speech slurred).

Police smell narcotics coming from room.

**People v. Chong Wing Louie**, 149 Cal. App. 2d 167.



Hear sniffing noises and conversation about narcotics coming from room.

**People v. Soto**, 144 Cal. App. 2d 294.

Defendant fits description given by informant.

**People v. Holguin**, 145 Cal. App. 2d 520;

**People v. Moore**, 141 Cal. App. 2d 87 (defendant appeared nervous and made conflicting statements).

#### *Conduct of defendant*

As officers approached defendant stepped backward and put a piece of paper in his mouth.

**People v. Amado**, 167 Cal. App. 2d 345.

Attempt to conceal something in glove compartment of car.

**People v. Hanley**, 156 Cal. App. 2d 544.

Observed hiding bindles of heroin.

**People v. Lawton**, 150 Cal. App. 2d 431.

Defendant contacted numerous people at drive-in.

**People v. One 1949 Plymouth Sedan**, 148 Cal. App. 2d 220.

Observe known narcotics users frequenting defendant's residence.

**People v. Maddox**, 46 Cal. 2d 301;

**People v. Lawrence**, 149 Cal. App. 2d 435.

Operator makes a buy from defendant and returns to officers with purchases.

**People v. Cannon**, 148 Cal. App. 2d 163;

**People v. Lawrence**, 149 Cal. App. 2d 435.

Defendant associating with known peddlers or users of narcotics.

**People v. Bates**, 163 Cal. App. 2d 847;

**People v. Hickman**, 143 Cal. App. 2d 79;

**People v. Walker**, 165 Cal. App. 2d 462.

#### *Insufficient corroboration.*

Prior to the arrest the officer had been told by an anonymous informant that the defendant was a known thief and dealt in narcotics. The officer had seen the defendant sitting in an automobile talking to a known addict about a month prior to the arrest. On the night of the arrest, at about 2 a.m., the officer observed defendant in the doorway of a liquor store talking to another person; every few moments the defendant left the doorway, looked down the street and returned to the doorway. The officer asked the defendant what he was doing and defendant answered that he was waiting for a friend. After placing him under arrest for vagrancy, the officer told the defendant to

take his hand out of his pocket and when defendant refused to do so, the officer grabbed his hand and found a marijuana cigarette.

**People v. Harris**, 146 Cal. App. 2d 142.

In *Hatjis v. Superior Court*, 144 Cal. App. 2d 426, the court said, by way of dictum (there was no evidence that the officers did not have a warrant for defendant's arrest), that the following facts did not constitute probable cause to arrest the defendant or search his person. The officers received information from two sources (one of which had supplied information to the officer before, but there was no evidence that the informants were reliable), that a person known as "Al" and another, known as "Green Eyes," were selling narcotics from a certain hotel room. The officers maintained a surveillance of the room and observed heavy traffic and among the traffic known addicts. The officers then placed Rivera, the occupant of the room, under arrest in the hallway and he gave his consent to the officers entering the room. Upon entering the room they found defendant and immediately placed him under arrest, searched him and found a heroin capsule.



#### Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### C. Informer Cases

### 3. REVEALING IDENTITY OF INFORMANT

#### *General Rule*

Disclosure is required where:

1. The informer participated in the crime charged;
2. He did not participate but was an eyewitness;
3. The informer's communication was the only justification for the action of the police even though the informer did nothing more than furnish information;
4. In view of the evidence, the informer would be a material witness on the issue of guilt and non-disclosure would deprive defendant of a fair trial.

When an arrest is valid apart from the information received; where the informer merely points the finger of suspicion at a defendant and the arrest is based on reasonable cause other than information received from the informer, the identity need *not* be revealed.

**People v. McMurray**, 171 A.C.A. 194.

Defendant had a right to learn the names of the informer *and also of the persons previously arrested on information from the informer* in order to test the reliability of the informer.

**People v. Robinson**, 166 Cal. App. 2d 416.



WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE  
ARRESTEE HAS COMMITTED FELONY

C. Informer Cases

**3. REVEALING IDENTITY OF INFORMANT**

**a. Information Is Sole Basis for Probable Cause**

Where officers rely solely on information to establish reasonable cause, and where defendant objects to the officer's testimony and demands disclosure of the informants' identities, the trial court should require disclosure or should exclude the testimony. If testimony of communication from a confidential informant is necessary to establish the legality of a search, the defendant must be given an opportunity to rebut that testimony. The defendant has a right to test the credibility of the information upon which the officer acts.

"... when the prosecution seeks to show reasonable cause for a search by testimony as to communications from an informer, either the identity of the informer must be disclosed when the defendant seeks disclosure or such testimony must be struck on proper motion of the defendant. Any holdings or implications to the contrary in *People v. Johnson*, 157 Cal. App. 2d 555, 559 [321 P. 2d 35]; *People v. Salcido*, 154 Cal. App. 2d 520, 522 [316 P. 2d 639]; *People v. Moore*, 154 Cal. App. 2d 43, 46-47 [317 P. 2d 357]; *People v. Merino*, 151 Cal. App. 2d 594, 597 [312 P. 2d 48]; *People v. Alaniz*, 149 Cal. App. 2d 560, 567 [309 P. 2d 71]; and *People v. Gonzales*, 141 Cal. App. 2d 604, 606-607 [297 P. 2d 50], are disapproved."

**Priestly v. Superior Court**, 50 Cal. 2d 812, 819;

**People v. Gutierrez**, 171 A.C.A. 790;

**People v. Robinson**, 166 Cal. App. 2d 416;

**People v. Chatman**, 166 Cal. App. 2d 627;

**People v. Carey**, 171 A.C.A. 579, 584.



## WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

### C. Informer Cases

### 3. REVEALING IDENTITY OF INFORMANT

#### b. Informer Is a Participant or a Material Witness

When an informant participates in the criminal act, he is no longer simply an informer but a material witness to the criminal act. When the informant becomes a participant, in order for the defendant to defend himself he has a right to examine the officer regarding the name of the informant or to ask other material questions concerning the informant. If the prosecution is not required to divulge the name the way is left open for the "phantom purchaser" and violates the concept of due process.

**People v. Lawrence**, 149 Cal. App. 2d 435.

The identity is important to the defense, and might prove defendant's innocence, since the informant might deny he was present at all or participated in any transactions. Defendant is entitled as a matter of law to be allowed to produce any witness who might give evidence favorable to defense. When a witness who testified to commission of a crime testifies that another person was also present and particularly when that other person was an active participant, the defendant has a right to cross-examine such person. The fact that there were eyewitnesses other than informant is not important.

**People v. Castiel**, 153 Cal. App. 2d 653.

Informant participates when he makes a "buy" of narcotics.

**People v. Castiel**, 153 Cal. App. 2d 653;

**People v. Lawrence**, 149 Cal. App. 2d 435;

**People v. Alvarez**, 154 Cal. App. 2d 694;

**De Losa v. Superior Court**, 166 Cal. App. 2d 1;

**Mitchell v. Superior Court**, 50 Cal. 2d 827;

**People v. Marquez**, 160 Cal. App. 2d 362.

In bookmaking case where confidential informant, observed by officer, handed money to defendant and then told officer that he had orally placed bets with defendant, and where informant entered defendant's store wearing concealed transmitter which broadcast to a patrol car, the defendant was entitled to have the identity of the informant revealed because he was a participant.

**People v. Mast**, 155 Cal. App. 2d 379.

Where the informer participates in one count, but not another, his identity may be required to be revealed if he is a material witness on the issue of identity.

The officer went with an informant to a hotel where they met defendant. In the hotel room the officer handed the informant \$10 to give to D. The informant asked D "if this was the stuff." The defendant answered "Yes, it is all the same." D handed the informant a balloon



containing heroin. Three days later the officer returned to the hotel alone and purchased heroin.

At the trial defendant asked the name of the informant. The trial court indicated he already knew the informant and the correct name would not help the informant, but the disclosure would be of great assistance to others engaged in illicit narcotic traffic, to the detriment of the public at large. The court reversed the conviction as to the first count where the informant participated, but affirmed the conviction on the second count where the officer made the purchase.

**People v. Cox**, 156 Cal. App. 2d 472;

**People v. Baker**, 170 Cal. App. 2d 240.

But contrast the three Supreme Court cases where the informant is a material witness, though not actually present when the offense is committed.

On April 12 (Count I) the officer went to a cafe with another person who, in the presence of the officer, made a purchase of heroin from the defendant. Four days later the officer met the defendant alone and purchases heroin (Count II). The following day the same thing occurred. (Count III). The prosecution dismissed Count I since the informant participated in the transaction. The defendant requested that the name of the informant be revealed.

Held, the name of the informer had to be revealed because he was a material witness as to whether or not the defendant was the person who sold heroin to the informant on April 12 when the officer was present, and consequently, as to whether the defendant was the person from whom the officer purchased heroin on April 16 and 17. Thus the informant was a material witness on the issue of identification.

**People v. Durazo**, 52 A.C. 367.

On February 4, an officer with an informer met the defendant. While the informer waited outside, the officer entered a cafe with the defendant and purchased narcotics from him. On February 7 the officer met defendant alone and made another buy of narcotics.

Held that the informer was clearly a material witness on the issue of guilt on the first sale. Although the informer did not witness the second transaction, it was consummated in reliance on the prior one, and the theory of the prosecution was that the same person committed both offenses. If the informer contradicted the officer's identification of defendant on the first sale, it would be material to show officer was mistaken in connecting the defendant with the second transaction.

**People v. Williams**, 51 Cal. 2d 355.

Officers heard confidential informant make appointment by telephone to purchase narcotics from the defendant; a recording of the conversation was made. The informant was given marked bills and was observed entering defendant's automobile. The informant then returned to the officers with heroin. (Count I). The next day the informant again made a phone call to defendant, and again it was re-

corded. The officers telephoned orders to two other officers who arrested defendant with heroin in his possession. (Count II).

As to Count I, the informant was a participant in the sale and a material witness and it was reversible error to refuse to disclose his identity. The fact that recordings were made of defendant's voice makes no difference when defendant denies the voice was his.

As to Count II, the defendant also has a right to know the identity of the informant. The informant was a material witness, though not an eyewitness, because the informant's telephone conversation was persuasive evidence on knowledge.

There is no privilege of non-disclosure if disclosure is relevant and helpful to the defense, even though the informant was not a participant.

" . . . Thus, when it appears from the evidence that the informer is a material witness of the issue of guilt and the accused seeks disclosure on cross-examination, the People must either disclose his identity or incur a dismissal. (See *Roviaro v. United States*, supra, 353 U.S. [53] at 61.) Any implications to the contrary in *People v. Cox*, 156 Cal. App. 2d 472, 477 [319 P. 2d 681], and *People v. Gonzales*, 136 Cal. App. 2d 437, 440-441 [288 P. 2d 588], are disapproved." (p. 808.)

**People v. McShann**, 50 Cal. 2d 802, 808.

Disclosure of the identity of the informer may include his address or other pertinent information in the possession of the prosecutor. The court held that the mere disclosure of the informer's name and the refusal to furnish further identifying information resulted in a miscarriage of justice.

**People v. Diaz**, 174 A.C.A. 857.



#### Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### C. Informer Cases

### 3. REVEALING IDENTITY OF INFORMANT

#### c. Nondisclosure Not Prejudicial Error

Defendant was arrested for possession of narcotics solely on information from a confidential reliable informant. Subsequent to the arrest, defendant consented to a search of the premises. The search revealed narcotics, which defendant admitted were his.

The court held the evidence was legally obtained because of the consent. In dictum they said that the testimony relating to the confidential informant should have been stricken and without that there was no probable cause to arrest. However, because the informant was not a participant or material witness, the identity of the informant was not necessary to the defense and that non-disclosure had not deprived defendant of a fair trial and was not prejudicial error.

**People v. Melody**, 164 Cal. App. 2d 728;

**People v. Rodríguez**, 168 Cal. App. 2d 452.

In a conviction for sale of narcotics, it was not prejudicial error for the officer at the preliminary hearing to refuse to name his informant where the informant's name was disclosed at the trial and where defendant at the trial revealed that he knew the informant, and where there was no showing that defendant planned or wanted to call the informant as a witness or was unable to locate him.

**People v. Justice**, 167 Cal. App. 2d 616.

Officers obtained information from informants who were searched and given money. The informants made buys from defendant and brought back the heroin to the officers. Defendant was then arrested with heroin in her possession.

Held, it was error to deny defendant's *disclosure* of the names of the two informants *at the preliminary hearing*, but prohibition will not lie to restrain the court from proceeding to trial since there was competent evidence to justify committing defendant.

**Mitchell v. Superior Court**, 50 Cal. 2d 827.



Part IV

WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE  
ARRESTEE HAS COMMITTED FELONY

C. Informer Cases

**3. REVEALING IDENTITY OF INFORMANT**

**d. Defendant Must Request That Identity of Informer Be Revealed**

Defendant must request the identity of the informant at the trial or it will not be considered on appeal.

**Lorenzen v. Superior Court**, 150 Cal. App. 2d 506;

**People v. Alvidrez**, 158 Cal. App. 2d 299;

**People v. Gorg**, 157 Cal. App. 2d 515;

**People v. Lundy**, 151 Cal. App. 2d 244;

**People v. Williams**, 172 A.C.A. 419;

**People v. Montez**, 173 A.C.A. 303;

**People v. Johnson**, 157 Cal. App. 2d 555;

**People v. Amado**, 167 Cal. App. 2d 345.

But see *People v. Alvarez*, 154 Cal. App. 2d 694, 699, where name of informer was asked by defendant Alvarez, not by co-defendant, and yet co-defendant Padilla was allowed to present point on appeal.

Where defendant requested that the name of the confidential informant be revealed at the preliminary hearing, and where the case was submitted on the transcript of the preliminary hearing and counsel failed to call to the attention of the trial judge the refusal of the committing magistrate to allow the disclosure of the informant's name, defendant had waived the question of his right to the disclosure of the informant's name.

**People v. Woo Mee Foo**, 159 Cal. App. 2d 429;

And see

**People v. Herman**, 163 Cal. App. 2d 821.

Prohibition to restrain the Superior Court from trying a criminal case was denied where no motion was made at the preliminary hearing to strike the officer's testimony, after the prosecution refused to reveal the identity of an informer, who provided the sole basis for probable cause for arrest on a narcotics charge. Neither in his objection to the introduction of the narcotics evidence nor by argument elsewhere in the record did defendant indicate he was relying on the refusal to identify the informer to establish the illegality of the arrest and search. The magistrate did not err in sustaining the objection to the question asking the identity of the informer as the prosecution was entitled to elect between disclosure and having the officers' testimony struck.

**Coy v. Superior Court**, 51 Cal. 2d 471.

A defendant is not required to make a showing that he does not know the identity of the informer.

**DeLosa v. Superior Court**, 166 Cal. App. 2d 1, 2;

**People v. Diaz**, 174 A.C.A. 857, 862.



WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE  
ARRESTEE HAS COMMITTED FELONY

C. Informer Cases

**3. REVEALING IDENTITY OF INFORMANT**

**e. Name of Informant Unknown**

Officer had probable cause to arrest defendant for bookmaking based solely on information from informant. The officer recognized the informer's voice as that of a person who had twice previously given reliable information, although the informer did not give his name.

Held—where an officer does not know the name of an informer he need not reveal it. He is not suppressing evidence. The case is clearly distinguishable from the *Priestly* case, supra. In the *Priestly* case the officer was required to fully disclose the information on which he relied. The witness must sustain his motives by all the evidence at his command.

**People v. Prewitt, 52 A.C. 342.**





## Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### C. Informer Cases

### 3. REVEALING IDENTITY OF INFORMANT

#### f. Prosecution Need Not Produce Informant

Although an informant is a participant and material witness, whose identity must be disclosed on request at the trial, where such identity is revealed, the prosecution is not required to call the informant as a witness. The defendant is not denied due process because the informant is not produced at the trial.

**People v. Shepherd**, 169 Cal. App. 2d 283.

The rule of disclosure of the identity of an informant does not extend to his production as a witness in court by the prosecution. The theory upon which the rule of disclosure has developed is to give defendant an opportunity to uncover facts relating to the informer's participation; permit an independent investigation of the information given to the officer and allow the defendant to locate and subpoena the informant. The Sixth Amendment pertaining to the United States Constitution is not applicable to proceeding in state courts. Even in the federal courts there is no requirement that all witnesses having knowledge of the crime be produced in court.

**People v. Smith**, 174 A.C.A. 149;

**People v. Alexander**, 168 Cal. App. 2d 753.

Where defendant receives what appears to be all the information possessed by the prosecutor concerning the confidential informer and where defendant has been afforded two weeks time to locate the informer, the prosecutor need not locate and produce the informer.

**People v. Smith**, 175 A.C.A. 425, 429-430;

**People v. Rodriguez**, 175 A.C.A. 55, 58;

**People v. Taylor**, 159 Cal. App. 2d 752, 756;

**People v. Mays**, 174 A.C.A. 505, 509. (In a narcotics prosecution the officer disclosed the name and all the information she had about the informer, who introduced the officer to the defendant and was present at the first buy, except the description of defendant's person which the trial judge ruled was immaterial.)



## Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### C. Informer Cases

### 3. REVEALING IDENTITY OF INFORMANT

#### g. Identity Need Not Be Revealed

The identity of an informant need not be revealed when the information merely provides the basis or starting point of an independent investigation by the officers, or merely points the finger of suspicion at the defendant, and where the officers do not rely solely on the information to provide probable cause but arrest or search on the basis of independent observations or investigations.

Where it developed only on cross examination that there had been an informer, but the People in proving the case against the defendant neither relied upon nor placed in evidence any information given them by the defendant, it was not necessary to reveal the name. The informer was not a material witness, and was not relied upon for probable cause.

**People v. Hicks**, 165 Cal. App. 2d 548, 552.

Held—identity need not be revealed where arrest based solely on observations made by arresting officers which reasonably led them to believe an offense was being committed in their presence.

**People v. Best**, 172 A.C.A. 829;

**People v. Alcalá**, 169 Cal. App. 2d 468. (Defendant subsequently admitted possession of narcotics and informant could not have given any helpful testimony.)

Officers lawfully on premises with search warrant made their own investigations regarding bookmaking.

**People v. Phillips**, 163 Cal. App. 2d 541;

**People v. Thornton**, 161 Cal. App. 2d 718.

When officers question defendant pursuant to information, if defendant consents to a search or voluntarily reveals evidence against himself, the identity of the informant need not be revealed.

**People v. Cherrie**, 162 Cal. App. 2d 143. (Defendant asked officers to come in and then dropped a yellow bindle from his person.)

**People v. Faulkner**, 166 Cal. App. 2d 446 (consent to search).

**People v. Alesi**, 169 Cal. App. 2d 758.

Defendant's attempt to escape provided additional probable cause for arrest.

**People v. Dewson**, 150 Cal. App. 2d 119.

**People v. Crayton**, 174 A.C.A. 289 (name of confidential informant need not be revealed where legality of search established by consent of owner of motel).

**People v. White**, 167 Cal. App. 2d 794. (Officers went to defendant's house as a result of having received information from an informant, to the effect that defendant would have marijuana in his house. While the officers were outside they announced they were police officers and they heard a "walking" noise inside the house. They opened the screen door and saw a woman walk hurriedly into another room, at which time officers entered the house, saw the defendant open the bathroom door with balloons in his hand, and arrested him.)

The arresting officer had had information concerning defendant as a narcotics peddler for two years, had made previous buys with the use of informant and had received specific information from an informant who had given accurate information in the past, that defendant was to make a delivery to the informant on a certain date. The informer was not present at the arrest. As the officers identified themselves to defendant, he started to run and threw away some heroin.

Held—the identity of the informer need not be revealed as he was not an eyewitness, was not present at the arrest, and his communication was not the only justification for the action of the police. There was nothing in the record to indicate the informer would have been a material witness on the issue of guilt or that any information elicited would have been helpful to the defense.

**People v. McMurray**, 171 A.C.A. 194.

Officers investigating pursuant to information overhear incriminating conversations pertaining to marijuana.

**People v. Smith**, 166 Cal. App. 2d 302;

**People v. Daley**, 172 A.C.A. 386.

Furtive conduct provides additional probable cause.

**People v. Garcia**, 171 A.C.A. 818. (Suspicious conduct which appeared to be an exchange of narcotics taking place.)

### *Criminal Record and Associates*

An officer had reasonable cause to search defendant independently of information imparted to him by a confidential informant where defendant was known to the officer as a convicted narcotics user, where defendant was in the company of a known addict and was in an area frequented by sellers and addicts.

The court said there is no injustice in holding that a past criminal record is one of several facts constituting justification to be suspicious. The officers may also take into account the fact that defendant was in the company of another addict. "Our strong devotion to the cherished principle that the citizen shall not be subjected to unreasonable treatment at the hands of the agents of society must be tempered with some reasonable appreciation of the facts of life and of the great dangers and difficulties which beset the officer of the law in his effort to protect the community from the blighting scourge of the narcotic traffic."

**People v. Hollins**, 173 A.C.A. 110.

Prosecution may elect between disclosure and having officer's testimony stricken.

**People v. Lopez**, 169 Cal. App. 2d 344. (Defendant asked for name of informant and when refused, moved to dismiss, but did not move to strike officer's testimony or object to the introduction of narcotics in evidence.)

Where neither a participant nor material witness.

**People v. Lepur**, 175 A.C.A. 851, 854;

**People v. Fabela**, 175 A.C.A. 577 (defendant known to have record for narcotics conviction, observed in company of known users and on one occasion in company of user, defendant observed searching through clump of Bermuda grass, and when he emerged he had a piece of tinfoil in his hand).

Need not be revealed when the informer simply points the finger of suspicion. The informer told the officers that defendant was engaged in furnishing heroin and on one occasion as officers watched he had gone in and returned with a package of heroin (which was introduced in evidence but later withdrawn). The officers observed known addicts enter and leave defendant's residence and after they knocked on the door they heard a swift movement toward the location of the bathroom.

**People v. Williams**, 175 A.C.A. 821.



Part IV

WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE  
ARRESTEE HAS COMMITTED FELONY

D. Reasonable Cause to Search Vehicle

**1. GENERAL RULE**

The search of a vehicle on reasonable cause should not be confused with a search of a vehicle incidental to an arrest made on reasonable cause, as the two are distinct. The right to search the vehicle on reasonable cause may be independent of the right to arrest; hence, an arrest need not precede such a search.

**Brinegar v. United States**, 338 U. S. 160, 69 S. Ct. 1302.

On the other hand the probable cause to search the vehicle may be based on the same facts which provide the probable cause for the arrest, in which case the search must be incident to a lawful arrest.

The automobile in the possession of the defendant at the time of his lawful arrest may be searched.

**People v. Lujan**, 141 Cal. App. 2d 143.





**Part IV**

**WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE  
ARRESTEE HAS COMMITTED FELONY**

**D. Reasonable Cause to Search Vehicle**

**1. GENERAL RULE**

**a. Reasonable Cause to Believe Contraband Contained Therein**

An automobile may be searched without a warrant where the officer has reasonable cause to believe it is carrying contraband or where he has reasonable cause to arrest an occupant of the automobile.

**People v. Brajevich, 174 A.C.A. 469.**

**But**

A general "roadblock" is unlawful and cannot justify stopping and searching all automobiles being lawfully used on the highways in the hope that some criminals will be found.

**People v. Gale, 46 Cal. 2d 253.**

In response to all unit alarm describing car and narcotics suspects, officers could stop car and ask occupants to show their arms, and when suspects had puncture marks on their arms, they could be arrested and car searched.

**People v. One 1956 Porsche Convertible, 175 A.C.A. 277.**



Part IV

WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE  
ARRESTEE HAS COMMITTED FELONY

D. Reasonable Cause to Search Vehicle

**1. GENERAL RULE**

**b. Distinction Between Homes and Automobiles**

**People v. Hanley**, 156 Cal. App. 2d 544 (recognizing that there is a material distinction between arresting persons in automobiles and in arresting persons in the sanctity of their homes).

And **People v. Daily**, 157 Cal. App. 2d 649, where the court said "A man's automobile, unlike his house, is a mobile object and the need for immediate search is deemed that much greater."

Since an automobile may readily be moved from place to place, its search without a warrant is not unreasonable if officer had reason to believe it is carrying contraband.

**People v. Brajevich**, 174 A.C.A. 469.



**Part IV**

**WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE  
ARRESTEE HAS COMMITTED FELONY**

**D. Reasonable Cause to Search Vehicle**

**1. GENERAL RULE**

**c. Impounded Vehicle**

An officer is authorized to remove a vehicle from the highway to the nearest garage when he arrests the driver or person in control of the vehicle or where such officer is required by law to take the person arrested immediately before a magistrate.

When officers arrested defendants in a parked car for vagrancy, they had a lawful right to impound the car and while officer was taking an inventory as required he saw a brown paper bag containing marijuana over the visor.

Held—when an automobile is lawfully in the custody of a peace officer, contraband contained in it is legally in his possession and its discovery is not the result of an illegal search.

**People v. Simpson**, 170 Cal. App. 2d 524;

**People v. Collier**, 169 Cal. App. 2d 19;

**People v. Ortiz**, 147 Cal. App. 2d 248, 250;

**People v. Baker**, 135 Cal. App. 2d 1, 5;

**People v. Hickens**, 165 Cal. App. 2d 364.



#### Part IV

### WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE ARRESTEE HAS COMMITTED FELONY

#### D. Reasonable Cause to Search Vehicle

### 2. TRAFFIC VIOLATIONS AND AUTOMOBILE

A traffic violation alone does not justify a search of the vehicle unrelated to the traffic violation.

**People v. Sanson**, 156 Cal. App. 2d 250;

**People v. Molarius**, 146 Cal. App. 2d 129;

**People v. Blodgett**, 46 Cal. 2d 114, 116.

In the following cases officers were justified initially in stopping vehicles for traffic violations. Subsequent questioning or conduct of defendants revealed probable cause to search.

**People v. Johnson**, 139 Cal. App. 2d 663 (automobile being operated at 3 a.m., in a rapid, erratic manner, almost hit another car. Thereafter became apparent that driver appeared to be under the influence of "something" and further search of the car and seizure of marijuana followed.)

#### *Furtive Conduct Justifies Search*

**People v. Zubia**, 166 Cal. App. 2d 620 (car stopped because of a defective stop light. Defendant was asked if he had any weapons in the automobile and he told officer he could look in the car. As officer approached defendant jumped into the automobile and crawled across the front seat and covered two paper sacks with a blanket. Marijuana found.)

**People v. Cantley**, 163 Cal. App. 2d 762 (defendant stopped for illegal U-turn, reached under front seat of vehicle.)

**People v. Sanson**, 156 Cal. App. 2d 250 (automobile stopped for illegal light. Occupants appeared to be hiding something under the front seat. The officer looked under the seat and found a bag containing marijuana.)

**People v. Shannon**, 147 Cal. App. 2d 300. (Defendant was found sitting in his car at four in the morning in front of a store with the motor running and he attempted flight as the police approached.)

**People v. Martin**, 46 Cal. 2d 106. (Two men in parked car in lovers' lane at night attempted to flee from officers.)

And see

**People v. Dewson**, 150 Cal. App. 2d 119;

**People v. Blodgett**, 46 Cal. 2d 114;

**People v. Tahtinen**, 50 Cal. 2d 127;

**People v. Hanley**, 156 Cal. App. 2d 544;



**People v. Anders**, 167 Cal. App. 2d 65. (Officer noticed defendant driving his vehicle at a very slow rate of speed, weaving back and forth on the highway. Defendant got out of the car while the codefendant remained seated in the passenger's seat. While the officer was writing a traffic citation, he saw a brown package leave the right side of the car and fall to the ground. The package contained three cigarettes resembling marijuana.)

#### *Contraband in Plain Sight*

Where the accused has been stopped for a traffic violation and the officers observed contraband in plain view no search is involved and the arrest and seizure would be valid.

**People v. McFarren**, 155 Cal. App. 2d 383 (defendant went through stop sign at 4:00 a.m. Officer stopped him and checked the registration slip and at that time saw a pistol under front seat of car. Defendant was arrested on "concealed weapon" charge. Court said that a search of the glove compartment for further weapons was justified, and when marijuana was found it was properly admissible.)

**People v. Cantley**, 163 Cal. App. 2d 762 (pistol observed under front seat of car.)

#### *Defendants Answer Description of Suspect*

**People v. Cantley**, 163 Cal. App. 2d 762 (the officers had a physical description of a robbery and murder suspect as "approximately 5'8", 170 to 180 pounds, male Negro, wearing a dark jacket and light pants." Defendant arrested in automobile fitted the description.)

**People v. Underhill**, 169 Cal. App. 2d 862 (the officer had been informed by a border sheriff that a certain individual wearing a brown and white striped shirt had crossed the border with narcotics. The officers originally pursued the car for failure to stop at an intersection about a mile north of the border. When the car was stopped one of the occupants was wearing a brown and white striped shirt and when questioned, they all appeared nervous and looked toward the cushion at the driver's seat).

#### *Drunkenness*

Where police officer, investigating a parked car during an early hour, seized defendant lying on the front seat and discovered that his breath was alcoholic and that he staggered badly, he lawfully arrested the defendant. The officer was then entitled to impound the car and search it. Marijuana found in the car was admissible in evidence. An officer is not required to close his eyes to contraband merely because it is disconnected with the initial purpose of the search.

**People v. Ortiz**, 147 Cal. App. 2d 248.

Officers arrested defendant for driving an automobile while intoxicated, and legally took possession of his car for safekeeping. A gun found under the front seat of the automobile, after the defendant had been booked, was legally obtained.

**People v. Baker**, 135 Cal. App. 2d 1.

### *Others*

Near midnight a car in an alley was going fifteen miles per hour and came upon police. Suddenly the car's speed increased to thirty miles per hour and bore down on police, barely missing them. The car was properly searched.

Dictum, there is no right to search simply because car is driving in alley at night.

**People v. Dore**, 146 Cal. App. 2d 541.

### *Blood Samples*

Blood sample was taken from driver after an automobile crash. There was no odor of alcohol present.

Held reasonable search and not a violation of due process.

**People v. Duroncelay**, 48 Cal. 2d 766;

**People v. Lewis**, 152 Cal. App. 2d 824.

### *No probable cause*

A general "roadblock" is unlawful and cannot justify stopping and searching all automobiles being lawfully used on the highways in the hope that contraband will be found.

**People v. Gale**, 46 Cal. 2d 253 (the mere fact that the front end of defendant's automobile was damaged would not constitute reasonable cause for arrest for hit and run driving. Assuming the damaged condition of an automobile would justify the officers in questioning the driver, when the questioning elicits an explanation consistent with innocence there is no probable cause to arrest him and search his car).

Defendant was arrested following an illegal "U" turn. He was advised that this arrest was for a traffic violation. Burglar tools were in the rear seat. The automobile in which defendant was traveling was registered in the name of a man who had failed to appear in court upon two traffic violations. This man had also been convicted of unlawful use of narcotics. There were no "holds" on him or on his vehicle.

There was no evidence that the officers believed or had reason to believe that the tools were possessed with felonious intent. The past record of the man the police thought to be the registered owner did not provide probable cause. The search bore no relation to the traffic offense.

**People v. Molarius**, 146 Cal. App. 2d 129.

An arrest made for a traffic offense such as double parking, does not justify a search made of the back seat of the car which would not be related to the offense for which the defendant was arrested. (Dictum, search was justified on other grounds.)

**People v. Blodgett**, 46 Cal. 2d 114, 116.



Part IV

WHAT CONSTITUTES REASONABLE OR PROBABLE CAUSE TO BELIEVE  
ARRESTEE HAS COMMITTED A FELONY

D. Reasonable Cause to Search Vehicle

**3. DEFENDANT ARRESTED AWAY FROM VEHICLE**

If the arrest occurs some distance from the automobile it may not be searched without consent even if arrest of the defendant was lawful.

*People v. Wilson*, 145 Cal. App. 2d 1.

Unless there is probable cause to believe that the vehicle contains contraband.

*United States v. Cefaratti*, 202 Fed. 2d 13 (defendant arrested with probable cause to believe he had narcotics, told officers the license number of a cab he had just parked. The policeman found the cab, searched it and seized narcotics concealed in it.

The court held that it was reasonable for the officer to believe that the defendant was keeping an appointment to sell drugs and that since the drugs were not on his person, they were in the cab.)

*Vehicles searched as incident to a valid arrest*

*People v. Moore*, 141 Cal. App. 2d 87 (defendant arrested in a pool hall on a narcotics charge voluntarily accompanied officers to his car which was located in nearby parking lot.)

*People v. Daily*, 157 Cal. App. 2d 649 (defendant arrested with reasonable cause to believe he had committed an abortion. Officers searched him and found a key to his car which he told them was parked in the street 50 or 60 feet distant).



REASONABLENESS OF THE SEARCH

A. General Definition

**1. QUESTION OF LAW**

The question of whether or not a particular search and seizure was reasonable is a question of law to be determined by the court outside of the presence of the jury.

**People v. Gorg**, 45 Cal. 2d 776, 780.

The court looks only at the facts and circumstances presented to the officers at the time they were required to act. If there is a conflict concerning the existence of facts and circumstances on which the officers based their arrest, the question is one of fact and the jury are to be told that if they find the facts in a designated way, such facts do or do not amount to probable cause. If, on the other hand, the conflict is only created by subsequent events (after the officers have acted), then the question is one of law for the court alone.

In this case whether or not the defendant had committed certain acts was in dispute, but the officers at the time they made the arrest were not aware of this dispute.

**People v. Paul**, 147 Cal. App. 2d 609, 619;

**People v. Mateo**, 171 A.C.A. 917, 923.

(See IV A1.)



## Part V

### REASONABLENESS OF THE SEARCH

#### B. Search as Incident to Lawful Arrest

The legality of the arrest is not necessarily determinative of the lawfulness of a search incident thereto.

When defendant has in fact committed a felony an arrest would be lawful without probable cause (Pen. Code, § 836(2)), but the search and seizure incident thereto would not be lawful.

**People v. Brown**, 45 Cal. 2d 640, 643;

**People v. Dewson**, 150 Cal. App. 2d 119, 130.

Conversely, a valid search justifiable without reference to an arrest is not voided by the unlawfulness of an arrest upon which the search does not depend. Some searches may be reasonable in the absence of an arrest and in no way related to an arrest.

**People v. Ball**, 162 Cal. App. 2d 465, 467 (involving consent to search) citing

**People v. Brown**, 45 Cal. 2d 640, 643;

**People v. Roberts**, 47 Cal. 2d 374;

**People v. Wright**, 153 Cal. App. 2d 35, 40.

**People v. Jackson**, 164 Cal. App. 2d 759, 762.

Where officers saw a pistol on the floor of an automobile, they were justified in a further search even though they may not have been able to arrest defendant on a concealed weapon charge since the weapon was not concealed.

**People v. Murphy**, 173 A.C.A. 412, 423.

Where an arrest is lawful because there is reasonable cause to arrest, the search and seizures incident thereto are legal (because they would also be based on reasonable cause).

**People v. Allen**, 142 Cal. App. 2d 267, 279;

**People v. Coleman**, 134 Cal. App. 2d 594, 599;

**People v. Mendoza**, 145 Cal. App. 2d 279, 284;

**People v. Lujan**, 141 Cal. App. 2d 143, 147;

**People v. Alcala**, 169 Cal. App. 2d 468, 471;

**People v. Adame**, 169 Cal. App. 2d 587, 598.

In order to be reasonable, the search must be incident to the arrest, and contemporaneous therewith as to time and place.

**People v. Gorg**, 45 Cal. 2d 776, 781;

**People v. Winston**, 46 Cal. 2d 151, 162.

The search must be reasonable and made in good faith.

**People v. Malone**, 173 A.C.A. 269, 276;

**People v. Muniz**, 172 A.C.A. 826, 828.

An accused's automobile may be searched as an incident to a lawful arrest, providing the search is reasonably related to the offense.

**People v. Blodgett**, 46 Cal. 2d 114, 116;

**People v. Molarius**, 146 Cal. App. 2d 129, 130.



Persons about to enter jails or penal institutions may be examined by the custodian for hidden weapons and contraband. When this examination is reasonable, and not conducted in a brutal or shocking manner, there is no constitutional inhibition.

**People v. Woods**, 139 Cal. App. 2d 515, 516 (rectal probe for narcotic).

## REASONABLENESS OF THE SEARCH

### B. Search as Incident to Lawful Arrest

#### 1. MAY BE BEFORE OR AFTER ARREST

If an arrest is lawful a search incident thereto would not be unlawful merely because it preceded the arrest, the important consideration being whether the officer has reasonable cause to make an arrest.

**People v. Ingle**, 53 A.C. 408 (Calif. Supreme Court Crim. 6564, Jan. 19, 1960);

**People v. Brown**, 147 Cal. App. 2d 352, 357;

**People v. Rodriguez**, 140 Cal. App. 2d 865, 868;

**Willson v. Superior Court**, 46 Cal. 2d 291, 294;

**People v. Martin**, 45 Cal. 2d 755, 762;

**People v. Moore**, 140 Cal. App. 2d 870, 872;

**People v. Boyles**, 45 Cal. 2d 652, 655;

**People v. Bock Leung Chew**, 142 Cal. App. 2d 400, 403;

**People v. Smith**, 141 Cal. App. 2d 399, 403;

**People v. Bouchard**, 161 Cal. App. 2d 302, 306;

**People v. Mateo**, 171 A.C.A. 917, 922;

**Gascon v. Superior Court**, 169 Cal. App. 2d 356, 358;

**People v. Bernal**, 174 A.C.A. 836.

Search held incident to a valid arrest:

**People v. Luna**, 155 Cal. App. 2d 493, 495 (where officer received reliable information that defendant had heroin in an apartment, a search of the room was justified in defendant's absence. Defendant was arrested later upon his return);

**People v. Vice**, 147 Cal. App. 2d 269, 274 (the officer received reliable information that defendant was selling narcotics at a hotel room. He went to the room and entered and found narcotics hidden in the bathroom. One-half hour later, defendant was found and arrested in another part of town);

**People v. Felli**, 156 Cal. App. 2d 123 (defendant was arrested in his car. One hour later a search of the car was made at the storage garage).



## Part V

### REASONABLENESS OF THE SEARCH

#### B. Search as Incident to Lawful Arrest

#### 2. EXPLORATORY SEARCHES

Where the bounds of a reasonable search have been exceeded, as where a search is made for evidence of crimes other than the one for which the arrest is made, neither the evidence wrongfully seized, nor any of its derivatives, may be used against the defendant.

**Silverthorne Lumber Co., Inc., v. United States**, 40 S. Ct. 182, 251 U.S. 385.

Defendant Mills, sole owner of a corporation, was arrested for violation of the Corporate Securities Act for not having secured a permit to issue stock. Following his arrest in a hotel room, the officers searched the room for all things having to do with stocks, stock promotions, letters that would reveal other investor's stock activities, etc. The officers searched through the file cabinet drawers, desk, table drawers, correspondence files, and in the bedroom, and produced a large volume of incriminating evidence. The arresting officer in this case, at the time of the arrest, had in his possession all the knowledge and evidence he needed to make a case, on the sale of stock to him. The search was not directed toward the discovery of instrumentalities or evidence of crime for which Mills was arrested, but for evidence of other similar crimes. The search revealed the names of various other persons in regard to unlawful activities, who were unknown to the officers at the time of the arrest.

The judgment was reversed as to defendant Cavanaugh, one of the unknown defendants, and also as to defendant Mills, with the exception of one count which could be sustained without the illegal evidence.

**People v. Mills**, 148 Cal. App. 2d 392.

Officers entered a doctor's office to arrest him for illegally performing an abortion on T, and then searched his office for evidence of alleged abortions performed on T and B, and searched all of the doctor's records regarding his patients. E's card was taken for the purpose of interviewing her; from her they obtained the names of J and R whose names were found in a desk diary they had also seized. Neither E nor the diary was in any way connected with the charge relating to T.

Held the search was general and exploratory and resulted in the seizure of confidential records, which were not connected with the offense charged.

**People v. Schaumlöffel**, 53 A.C. 97.

And see cases under V-G.



## REASONABLENESS OF THE SEARCH

### C. Need Not Procure Search Warrant

Even though the officers have time to procure a search warrant, they may make a search as an incident to a lawful arrest without obtaining a search warrant.

**Trowbridge v. Superior Court**, 144 Cal. App. 2d 13, 23;  
**People v. Sayles**, 140 Cal. App. 2d 657, 660;  
**People v. Allen**, 142 Cal. App. 2d 267, 280;  
**People v. Coleman**, 134 Cal. App. 2d 594, 599;  
**People v. Dominguez**, 144 Cal. App. 2d 63, 65;  
**People v. Dupee**, 151 Cal. App. 2d 364, 367;  
**People v. Gusukuna**, 152 Cal. App. 2d 135, 139.

The relevant test is not whether it is reasonable to procure a search warrant, but whether the search itself was reasonable.

**People v. Winston**, 46 Cal. 2d 151, 162.

Where the officers secured specific information from an informant concerning possession of narcotics by the defendant, the defendant contended that the confidential informant had ample time to secure a search warrant. The court said that this was immaterial since the arrest and search were conducted by the officers and not by the informant and the only question was whether the officers had probable cause to arrest the defendant and incidentally search.

**People v. Merino**, 151 Cal. App. 2d 594, 597.

Officers had reliable information concerning defendant's activities approximately *two weeks* before the arrest. Whether the failure to procure a warrant within the two-week period was unreasonable was primarily a fact question for the committing magistrate to decide. The information given the officers by the informant did not give the defendant's exact address. To obtain it would have required further investigation.

**Lorenzen v. Superior Court**, 150 Cal. App. 2d 506, 512.



REASONABLENESS OF THE SEARCH

D. Consent

**1. SUBSTITUTE FOR REASONABLE CAUSE  
OR SEARCH WARRANT**

It is not necessary for the People to show that the search and seizure was reasonable because based on probable cause as an incident to a proper arrest, or based on a search warrant, where the evidence shows that the defendant freely consented to the search of the premises under his control, or where defendant voluntarily reveals evidence against himself.

**People v. Burke**, 47 Cal. 2d 45, 49;

**People v. Gorg**, 45 Cal. 2d 776, 783;

**People v. Michael**, 45 Cal. 2d 751;

**People v. Allen**, 142 Cal. App. 2d 267, 281;

**People v. Faulkner**, 166 Cal. App. 2d 446, 447;

**People v. Bouchard**, 161 Cal. App. 2d 302, 306;

**People v. Fields**, 167 Cal. App. 2d 773, 777.

It is not unreasonable for officers to seek interviews with suspects or witnesses or to call on them at their homes for such purposes. Where officers gain entrance with the consent of the defendant, they may then make an arrest where a public offense is being committed by the defendant in their presence.

**People v. Martin**, 45 Cal. 2d 755, 761.

Overhearing and recording a telephone conversation with the consent of one of the parties is not an unreasonable search and seizure.

**People v. Malotte**, 46 Cal. 2d 59, 64;

**People v. Cahan**, 141 Cal. App. 2d 891, 901.

When defendant consented to a search of his apartment for another suspect, and officers found marijuana, the fact that an arrest of the defendant may have been unlawful does not invalidate the search where the search did not depend on the arrest.

**People v. Ball**, 162 Cal. App. 2d 465, 467.





## REASONABLENESS OF THE SEARCH

## D. Consent

**2. QUESTION OF FACT AND BURDEN OF PROOF**

The question of free consent is one of fact to be decided by the trial court.

**People v. Gorg**, 45 Cal. 2d 776, 782;  
**People v. Michael**, 45 Cal. 2d 751;  
**People v. Burke**, 47 Cal. 2d 45, 49;  
**People v. Guy**, 145 Cal. App. 2d 481, 490;  
**People v. Hood**, 149 Cal. App. 2d 836, 838;  
**People v. Robinson**, 149 Cal. App. 2d 342, 344;  
**People v. Torres**, 158 Cal. App. 2d 213, 215;  
**People v. Griffin**, 162 Cal. App. 2d 712, 715;  
**People v. White**, 159 Cal. App. 2d 586, 594;  
**People v. Fields**, 167 Cal. App. 2d 773, 776;  
**People v. Melody**, 164 Cal. App. 2d 728, 734;  
**People v. Faulkner**, 166 Cal. App. 2d 446.

Whether defendant in a narcotics prosecution consented to search is a question of fact and a finding by the trial court when supported by substantial evidence that defendant voluntarily rolled up his sleeves for an officer and exposed fresh needle marks is binding on an appellate court.

**People v. Smith**, 141 Cal. App. 2d 399, 402.

When the prosecution seeks to justify a search on the basis of consent, they have the burden of proving consent.

**People v. Roberts**, 47 Cal. 2d 374, 377;

**People v. Gorg**, 45 Cal. 2d 776, 782 (after the defendant had been taken to jail, the officers asked for permission to search his room. When the officer was asked to relate what the defendant had said he was unable to relate the testimony and just said that the defendant did not object. The gist of the officer's testimony was that he had concluded that he had permission. The court said that it was doubtful whether the People had sustained their burden of proving consent).



## REASONABLENESS OF THE SEARCH

## D. Consent

**3. CONSENT BY DEFENDANT**

Where defendant freely consents to search of premises under his control, any search made pursuant thereto is not unreasonable, even though the initial arrest was later deemed to be without probable cause.

**People v. King**, 175 A.C.A. 415, 418.

Following fact situations held to constitute consent to search.

Approximately one month after defendant's arrest, written consent was obtained from him to search his residence and his automobile. Nothing was found on that day, but one week later the car was searched again in a police parking lot. The consent extended to the second search.

**People v. Hickens**, 165 Cal. App. 2d 364, 369.

Officers knocked at the door, identified themselves and the occupant of the room opened the door, stepped back and sat on the bed. Her actions suggested an affirmative invitation to the officers to enter.

**People v. Smyre**, 164 Cal. App. 2d 218, 224.

Defendant was arrested on reasonable cause and searched on the street. Officers asked him if they could search defendant's room, whereupon he said yes but gave them a false address. He was taken to the correct address which was verified with the landlady. Defendant denied that he lived there, and when the officer said, "Then you don't mind if we search, do you?" he replied, "Certainly, go ahead. I don't live here." There was consent to search.

**People v. White**, 159 Cal. App. 2d 586, 593.

Consent to search was found where an officer asked defendant to go with him to the police station "to be checked out on a robbery case." There was no probable cause to arrest the defendant and he was not in custody. The defendant stated he would go and the officer asked him if he would drive his own car. The defendant stated that he had no driver's license but that the officer could drive the defendant's car. At the parking lot, the officer asked the defendant if he could search his car and the defendant answered, "Yes, go ahead." Upon looking under the front seat, the officer found a billy-club, after which the defendant was placed under arrest.

**People v. Hood**, 149 Cal. App. 2d 836, 838;

The defendant consented to the officer's looking into the car and actively and voluntarily opened the door to permit the officer to look inside, without compulsion on the officer's part.

**People v. Williams**, 148 Cal. App. 2d 525, 533.

Officers went to defendant's apartment. Defendant's wife asked the officers to come in. The officers asked if it was all right to look around

and both defendant and his wife (who occupied the apartment and from whom defendant was allegedly separated) said they did not mind.

**People v. Walters**, 148 Cal. App. 2d 426, 430.

After the defendant had been arrested, officer asked defendant if it was all right to search her bedroom and she stated that it was.

**People v. Guy**, 145 Cal. App. 2d 481, 483, 490.

The officers knocked at defendant's door, identified themselves, and said they would like to talk to him. Defendant opened the door and the officers, without further invitation, came in. Officers asked him if he had ever been arrested for a narcotics violation and defendant said he had. Officers then said, "You don't mind then if we search your apartment do you?" The defendant said, "No, go ahead."

**People v. Torres**, 158 Cal. App. 2d 213, 214.

Officers had information that defendant's roommates were arrested for robbery. The officers knocked on the door and identified themselves, but were inside the doorway and had searched the defendant for weapons before they asked permission to search. When the defendant told them there was a pair of brass knuckles under the bed, the consent to search was freely given.

**People v. Bouchard**, 161 Cal. App. 2d 302, 304.

Defendant was arrested after arresting officer had received information from a confidential informant that defendant had marijuana in his home. He was then asked by the officers if they could search and he said, "Sure, go ahead." (Defendant testified to the contrary.)

**People v. Melody**, 164 Cal. App. 2d 728, 734;

**People v. Olson**, 166 Cal. App. 2d 532, 534 (defendant voluntarily accompanied the officers to his truck and gave them the keys).

In the following cases consent to enter coupled with observations of objects in plain sight justified search.

In a check forgery case, blank checks were lawfully seized where defendant was arrested away from his room and where officer testified that defendant asked him to go to his room and see that his clothes were taken care of. In defendant's room, the officer saw blank checks on a table in plain sight.

Held, the officer being lawfully in defendant's room, although he could not make a search beyond the scope of defendant's permission, was not required to close his eyes to what appeared obvious.

**People v. Griffin**, 162 Cal. App. 2d 712, 714.

Information was received from a reliable informant that defendant had narcotics at a certain address. The officers knocked on the door, and identified themselves, whereupon defendant opened the door and said "Come in". The officers observed yellow bundle fall from defendant's person.

**People v. Cherrie**, 162 Cal. App. 2d 143, 145.

Where the officers knocked and identified themselves and the defendant opened the door and let the officers in there was evidence of consent. Once the officers had gained admittance they had reasonable cause to believe that defendant was engaged in bookmaking when they saw telephones, blackboards, chalk, scratch sheet, and a wet rag.

**People v. Martin**, 45 Cal. 2d 755, 761.

Police knocked on defendant's door and defendant invited them to enter. Police went in and saw heroin. Defendant was apparently under the influence of narcotics. A search produced more heroin. Held consent to enter, and once inside police had probable cause to search.

**People v. Mendoza**, 145 Cal. App. 2d 279, 283;

**People v. Holland**, 148 Cal. App. 2d 933.

*In re Dixon*, 41 Cal. 2d 756, 761, officers went to the defendant's apartment looking for another individual. They identified themselves as police officers and defendant invited them to enter. While one of them was talking to him, the other, standing in an inner door looking into another room, observed a ten-dollar bill taped to a printing frame before a camera. The officers then arrested the defendant and searched the premises. The court concluded that the entry was by consent, and the subsequent observation of the counterfeiting equipment was grounds for defendant's arrest.

#### *Accepting conditions of parole*

By accepting the privilege of parole, a prisoner consents to the broad supervisory and visitatorial powers which his parole officer must exercise. Having constructive custody of his prisoner at all times, there is nothing unreasonable in the parole officer's search of the premises where he has reasonable cause to believe the parole has been breached.

**People v. Robarge**, 151 Cal. App. 2d 660, 665.

#### *Defendant voluntarily reveals evidence against himself*

Where defendant, a known user of narcotics, voluntarily reveals to the officer fresh injection marks on his arm, the officer is justified in arresting him.

**People v. Jaurequi**, 142 Cal. App. 2d 555, 561;

**People v. West**, 144 Cal. App. 2d 214, 220 (defendant voluntarily unwrapped a bundle of clothes and showed them to officers);

**People v. Michael**, 45 Cal. 2d 751, 754 (defendant voluntarily showed officers a box containing narcotics);

**People v. Washington**, 163 Cal. App. 2d 833, 841 (defendant voluntarily emptied the contents of her purse at the officer's request);

**People v. Houston**, 164 Cal. App. 2d 396, 399 (following his arrest, officers told defendant if he had narcotics secreted on body it would be better if he gave it to the officers rather than have it found in jail. Defendant stated he would give it to the officers and withdrew a latex bag containing heroin from his rectum);

**People v. Boyd**, 162 Cal. App. 2d 332. (Defendant opened door of his residence and officer observed needle marks on his arm.)

*Consent disregarded*

Defendant was involved in a collision. Occupants of the other car were seriously injured. A whiskey bottle, almost empty, was found in the glove compartment of defendant's car and when defendant was taken to the hospital the smell of liquor was detected on his breath. While defendant was unconscious, a physician withdrew a blood sample to be used for alcoholic content analysis. Held the testimony regarding the result of the blood test was admissible in a manslaughter prosecution.

The conduct of the State officers does not offend that "sense of justice" of which the United States Supreme Court spoke in *Rochin v. California*, 342 U.S. 165, 72 S. Ct. 205. A blood test taken by a skilled technician is not conduct that shocks the conscience nor does it amount to brutality.

The defendant who was unconscious at the time of the removal of the blood sample, obviously did not consent. The majority opinion apparently disregarded this factor.

Warren, Black and Douglas dissented, saying that since there was clearly no consent the case was similar to the *Rochin* case, since in both instances body fluids were removed from the defendant without his consent and the sanctity of the person is equally violated where the prisoner is incapable of offering resistance as it would be if force were used to overcome his resistance.

**Breithaupt v. Abram**, 77 S. Ct. 408, 410 (*New Mexico*), 352 U.S. 434, 435.

Blood samples taken from defendant after automobile crash. Held reasonable search, though no evidence of consent present.

**People v. Duroncelay**, 48 Cal. 2d 766;

**People v. Lewis**, 152 Cal. App. 2d 824.

REASONABLENESS OF THE SEARCH

D. Consent

**4. CONSENT BY ANOTHER**

**a. A Person in Joint Possession**

Anyone in joint occupancy of the premises has authority to consent to an entry or search.

**People v. Howard**, 166 Cal. App. 2d 638, 651 (defendant's mistress who occupied the same apartment with the defendant told the officers that defendant had brought home property, which he told her was stolen, and had it at the apartment. She took the officers to the apartment and admitted them. Once in the apartment, the officers observed some stolen property in plain sight. A further search was made and other stolen property was found.)

**People v. Silva**, 140 Cal. App. 2d 791, 795 (permission given by co-defendant to search the home wherein he was a joint occupant with defendant. Co-defendant was asked at the police station, while in custody, whether he had marijuana in his home. He said, "No, you can go and look for yourself." He was taken to his home by the officers.)

**People v. Stewart**, 144 Cal. App. 2d 555, 559 (officer entered a house with the consent of a person who resided with the defendant, but search was made with defendant's consent.)

In *People v. Herman*, 163 Cal. App. 2d 821, 826, the court said in dictum that the search of the defendant's residence was probably reasonable where for about a month before the arrest, known addicts were seen going in and out and where M answered the bell, invited the officers to enter, and told them he did not live with the defendant but stayed there from time to time.

The court said the fact that M was in the house alone supports the reasonable inference that this was one of the times he was in joint possession and not simply a casual guest.

A partner may bind his copartner by consenting to a search of premises operated by the partnership.

**United States v. Sferas**, 210 Fed. 2d 69, 74.



### *Wife*

A wife has authority to consent to an entry and search of the home.

**People v. Dominguez**, 144 Cal. App. 2d 63, 65;

**United States v. Pugliese**, 153 Fed. 2d 497, 499 (dicta);

**Stein v. United States**, 166 Fed. 2d 851, 855 (defendant's paramour who had been living with defendant took officers to defendant's home, broke a window and admitted the officers).

When the usual amicable relations exist between husband and wife, and the property seized is of a kind over which the wife normally exercises as much control as the husband, it is reasonable to conclude she may consent to a search and seizure of property in their home.

**People v. Carter**, 48 Cal. 2d 737, 746.

The possibility of implied coercion where the wife consents to a search should be given careful consideration.

(See V-D-5-b.)

## REASONABLENESS OF THE SEARCH

## D. Consent

**4. CONSENT BY ANOTHER****b. Apparent Authority**

If officers act in good faith and reasonably believe that the person consenting to a search has authority to consent, they may rely on apparent authority.

In two cases a search of the defendant's room in a private home without a warrant and in the defendant's absence was involved. (*People v. Gorg*, 45 Cal. 2d 766, 783; *People v. Caritativo*, 46 Cal. 2d 68.) In both, the court held that if they acted in good faith, the officers could rely on the apparent authority of the homeowner over his home to justify a search of defendant's room made with the homeowner's consent. Since the purpose of the exclusionary rule was to deter unreasonable activity, it would not be invoked if the officers were mistaken in their reasonable belief that the homeowner had the authority over his home he purported to have.

Officers lawfully entered apartment with consent of defendant's father, who directed them to the defendant.

**People v. Salcido**, 154 Cal. App. 2d 520, 522;

**People v. Galle**, 153 Cal. App. 2d 88, 90 (mother consented to search of defendant's bedroom);

**People v. Cahan**, 150 Cal. App. 2d 786, 788 (homeowner consents to entry into her home, in which officers hid and observed from bedroom defendant engage in bookmaking);

**People v. Misquez**, 152 Cal. App. 2d 471, 479 (baby sitter who was given keys to apartment permitted officers to enter);

but compare

**People v. Jennings**, 142 Cal. App. 2d 160, 169, where minor daughter did not have authority to consent to a search of defendant's home.

**People v. Jager**, 145 Cal. App. 2d 792, 798 (defendant proposed to a locksmith a plan of robbing a jeweler. The locksmith contacted the police. Police picked the lock on the jeweler's door and installed a recording device. One week later defendant attempted to rob jeweler's safe. Police recorded the incident from an adjoining room by use of the recording device previously installed. Held: no consent by jeweler).

Entry of police officers into apartment of a tenant can not be justified on the ground that they believed, in good faith, that the manager had authority to consent thereto, where there was no evidence that the officers had reason to believe that she had such authority and where the manager testified that she did not have such authority and that in

admitting the officers she acted solely at their request on the assumption they were entitled to enter.

**People v. Roberts**, 47 *Cal. 2d* 374, 377.

But contrast:

**People v. Ambrose**, 155 *Cal. App. 2d* 513, 523 (officers asked hotel manager for authority to enter defendant's room (following the arrest), whereupon the manager opened the door and let them in. The court held it was reasonable for the trier of fact to conclude that the hotel manager believed, as he testified at trial, that he possessed the authority to enter defendant's room and that officers acted in good faith and with the belief that the manager possessed the authority asserted);

**People v. Dillard**, 168 *Cal. App. 2d* 158 (where the apartment manager opened defendant's door and allowed officers to enter and when officers then saw marijuana seeds on the bed, there was no illegal search);

**People v. Crayton**, 174 *A.C.A.* 289 (owner of motel had complete control of motel room after defendant's occupancy ended at 12:00 noon of a certain day).

## REASONABLENESS OF THE SEARCH

### D. Consent

#### 5. VOLUNTARY NATURE OF THE CONSENT

##### a. Defendant in Custody

In order to be effective a consent to search must be voluntary but the mere fact that defendant is in custody or under arrest at the time does not per se make a consent involuntary although it may be one factor in determining whether the consent is voluntary.

**People v. King**, 175 A.C.A. 415;

**People v. White**, 159 Cal. App. 2d 586;

**People v. Melody**, 164 Cal. App. 2d 728;

**People v. Fields**, 167 Cal. App. 2d 773;

**People v. Garnett**, 148 Cal. App. 2d 280;

**People v. Lujan**, 141 Cal. App. 2d 143 (defendant in handcuffs);

**People v. Ashcraft**, 138 Cal. App. 2d 820 (defendant, after his arrest for armed robbery, voluntarily accompanies policemen to his home and assists and directs them in finding a gun and license plates used in the robbery);

**People v. Dominguez**, 144 Cal. App. 2d 63 (consent of wife not involuntary merely because at the time given her husband was in jail);

**People v. Guy**, 145 Cal. App. 2d 481.

##### Contrast

**People v. Wilson**, 145 Cal. App. 2d 1. (Where defendant was arrested without probable cause for vagrancy and searched without his consent. Officers then told him they would like to look at his car whereupon defendant gave them the keys.

Court held the consent was coerced and a 'permission' granted after a person had been improperly arrested and searched, while he is still in custody, and without informing him of his legal right to refuse permission, is not a real or proper consent.)



## REASONABLENESS OF THE SEARCH

## D. Consent

**5. VOLUNTARY NATURE OF THE CONSENT****b. Implied Coercion**

The following cases may aid the officer to avoid the problem of implied coercion. In *United States v. Slusser*, 270 Fed. 818, the officers went to the defendant's residence and were admitted. One of the agents displayed his badge and said they were there to search for liquor. Defendant said, "All right; go ahead." The court held the search was not by consent and could be attributed to a peaceful submission to the officers.

In the case of *Amos v. United States*, 41 S. Ct. 266, 255 U.S. 313, the officers went to the defendant's home and told his wife they were Revenue Officers, and they had come to search the premises "for violation of the Revenue Act." The woman opened the door, whereupon the officers entered and searched. The court stated that the wife did not consent; it was perfectly clear that under the implied coercion in this case, no waiver was intended or effected.

In *Johnson v. United States*, 68 S. Ct. 367, 333 U.S. 10, the officers knocked and a voice inside asked who was there. The officer replied, "Lieutenant Belland." There was a slight delay, and some shuffling or noise in the room. The defendant, a woman, then opened the door. The officer said, "I want to talk to you a little bit." The woman then stepped back acquiescently and admitted him.

The court held that the consent to the entry at the beginning of the search was demanded under color of office and was granted in submission to authority rather than as an intentional waiver.

It will be noted that both in the *Amos* and *Johnson* cases a woman was involved and the officers either announced themselves as officers or were dressed as officers, and that the woman involved did not affirmatively consent but simply acquiesced in the entry and search.

It should be clear that there is no consent where the officers make a show of force. Nor is there consent where the officers assert the right to search or where the search is made under a purported search warrant, even though the person consents to such search. Thus, where the officers handed a paper to the defendant and told him it was a search warrant to search his premises, the defendant said, "Go ahead; you have full liberty to go all through the place." There was no consent to search. (*Salata v. United States*, 286 Fed. 125), but compare

**People v. Robinson**, 149 Cal. App. 2d 342 (officers told defendant that they thought he had narcotics in his room and requested leave to search the apartment. Defendant made no reply and officer said if he wished they could go downtown and obtain a search warrant. He replied that it was unneces-

sary and said, "Well, let's forget about it; let's go up there." The defendant unlocked the door and ushered the officers in and said, "Go right ahead." There was no implied coercion).

And see V-D-3 *supra*

# REASONABLENESS OF THE SEARCH

## D. Consent

### 6. SEARCH CANNOT GO BEYOND SCOPE OF CONSENT

A search may not go beyond the express scope of the consent. For example, consent to search a house does not necessarily include consent to search the garage. (*United States v. Slusser*, 270 Fed. 818.) Likewise, consent given by a doctor to search his office for a file in a given case does not authorize the officers to search and seize other files.

**People v. Schmoll**, 48 N.E. 2d 933 (Ill.).

Where defendant consents to an entry and search for one purpose, contraband discovered during that search is admissible.

**People v. Collier**, 169 Cal. App. 2d 19 (permission to search apartment only for loot from an alleged robbery. Marijuana seized as a result of that search was admissible);

**People v. Griffin**, 162 Cal. App. 2d 712 (officer asked by defendant in custody to go to his room and take care of his clothes. Officer while lawfully in defendant's room could seize blank checks in plain sight);

**People v. Hickens**, 165 Cal. App. 2d 364 (approximately one month after defendant's arrest for forgery, written consent was obtained from defendant to search his residence and his automobile. Nothing was found in the automobile that day, but one week later the car, which then was in a police parking lot, was searched again, and revealed a stamp used in the forgery. Consent extended to second search).





**Part V**

**REASONABLENESS OF THE SEARCH**

**D. Consent**

**7. SEARCH OF PREMISES OF LICENSEE**

The State and Federal Governments have a right to conduct reasonable inspections of premises operated under a license from the State or Federal Government. (Implied consent theory.)

**Cooley v. State Board of Funeral Directors and Embalmers,**  
*141 Cal. App. 2d 293.*

**Thorp v. Dept. of Alcoholic Beverage Control,** *175 A.C.A. 523.*



**Part V**

**REASONABLENESS OF THE SEARCH**

**E. Privilege to Enter to Render Aid**

Police officers entering an apartment because they heard moaning sounds as if a person were in distress, could properly make that kind of search reasonably necessary to determine whether a person was actually in distress. They could not ransack the premises, but in the course of a reasonable search they would not have to blind themselves to that which was in plain sight such as a radio fitting the description of stolen property, simply because it was disconnected from the purpose for which they entered.

**People v. Roberts, 47 Cal. 2d 374.**



## REASONABLENESS OF THE SEARCH

## F. What Constitutes a Search and Methods Used

**1. OVERHEARING CONVERSATION AND MECHANICAL LISTENING DEVICES**

Where evidence is obtained with the aid of a microphone hidden on a person who is in defendant's home at the latter's invitation, there is no trespass, and no illegal search or seizure.

**People v. Avas**, 144 Cal. App. 2d 91;

**People v. Wojahn**, 169 Cal. App. 2d 135;

**People v. MacKenzie**, 144 Cal. App. 2d 100;

**People v. Goldberg**, 152 Cal. App. 2d 562.

Overhearing a telephone conversation with the consent of one of the parties is not an unreasonable search and seizure.

**People v. Cahan**, 141 Cal. App. 2d 891;

**People v. Lawrence**, 149 Cal. App. 2d 435;

**People v. Malotte**, 46 Cal. 2d 59;

**People v. McShann**, 50 Cal. 2d 802;

**People v. Cahill**, 163 Cal. App. 2d 15.

And there is no violation of the Federal Communications Act. (47 U.S.C. § 605, wire tapping acts, Calif. Const. Art. I, Sec. 19 and Penal Code § 640.)

**People v. Lawrence**, 149 Cal. App. 2d 435.

Obtaining evidence with sound devices attached to the wall is not unlawful if no trespass is committed to install the equipment.

**People v. Anderson**, 145 Cal. App. 2d 201;

**People v. Graff**, 144 Cal. App. 2d 199.

But contrast

**People v. Jager**, 145 Cal. App. 2d 792 (in a burglary prosecution it was error to admit evidence obtained by the use of a microphone installed in the victim's office by means of an entry without his consent and not for the purpose of protecting his property, but to obtain evidence at some future time for use against defendant).

Where the installation of listening devices is in a place of occupancy without permission of a person having the authority to consent, evidence obtained by such means is unlawful.

**Wirin v. Parker**, 48 Cal. 2d 890.

Section 653(h) of the Penal Code, providing in part "... that nothing herein shall prevent the use and installation of dictographs by a regular salaried peace officer expressly authorized thereto by the head of his office or department or by a district attorney, when such use and installation is necessary in the performance of their duties

in detecting crime and in the apprehension of criminals . . .” does not authorize violations of constitutional provisions relating to search and seizure.

**People v. Tarantino**, *45 Cal. 2d 590*.

## REASONABLENESS OF THE SEARCH

### F. What Constitutes a Search and Methods Used

#### 2. OBSERVING THAT WHICH IS PATENT

*Observing that which is open and patent is not an unreasonable search.*

The use of one's eyes from the outside of the building is not a search and where officers observed evidence of bookmaking, to corroborate anonymous information, there was probable cause to arrest.

**People v. Easley**, 148 Cal. App. 2d 565.

**Thorp v. Dept. of Alcoholic Beverage Control**, 175 A.C.A. 523.

(Agents entered barroom and observed owner take telephone calls, make marks on scratch sheet, quote numbers to callers, and receive currency from persons. They also heard defendant tell a patron he was making horses.)

Looking through a window does not constitute an unreasonable search, and may entitle the officers to act on what they see and arrest defendant.

**People v. Martin**, 45 Cal. 2d 755;

**People v. Moore**, 140 Cal. App. 2d 870;

**People v. Hen Chin**, 145 Cal. App. 2d 583;

**People v. Wright**, 153 Cal. App. 2d 35.

Taking pictures through a window is not an unreasonable search and seizure.

**Cooley v. State Board of Funeral Directors and Embalmers**, 141 Cal. App. 2d 293.

Police officers entering an apartment because they heard moaning sounds as if a person were in distress could properly make a search to determine whether a person was actually in distress. In the course of a reasonable search they would not have to blind themselves to that which was in plain sight such as a radio fitting the description of stolen property, simply because it was disconnected from the purpose for which they entered.

**People v. Roberts**, 47 Cal. 2d 374;

**People v. Howard** 166 Cal. App. 2d 638.

Officer seeing marks on arms of narcotics user which "appeared like something had been injected into his vein," was justified in making arrest.

**People v. Jaurequi**, 142 Cal. App. 2d 555.

It is not a search to observe a pistol in plain sight on the floor of a car while the driver is being questioned about his automobile registration, and such observation warrants further search.

**People v. Murphy**, 173 A. C. A. 412;

**People v. McFarren**, 155 Cal. App. 2d 383;



**People v. Cantley**, 163 Cal. App. 2d 762;

**People v. Carnes**, 173 A. C. A. 625 (officers justified in stopping car see burglar tools on back seat).

Where defendants drop contraband to the ground there is no search and seizure. A seizure is not a voluntary surrender.

**People v. Spicer**, 163 Cal. App. 2d 678;

**People v. Smyre**, 164 Cal. App. 2d 218.

“ . . . A search implies a prying into hidden places for that which is concealed . . . the mere looking at that which is open to view is not a ‘search.’ ”

**People v. Spicer**, 163 Cal. App. 2d 678;

**People v. Ambrose**, 155 Cal. App. 2d 513 (when defendant was arrested, he was wearing two rings. On arrival at police station, the rings were not on his fingers. Officers found them near the door of the police vehicle).

## REASONABLENESS OF THE SEARCH

## F. What Constitutes a Search and Methods Used

**3. DEFENDANT'S PERSON AND USE OF FORCE**

Where there was an odor of alcohol after an automobile crash, the taking of a blood sample from defendant without consent is a reasonable search and seizure. The admission of the evidence did not violate defendant's privilege against self-incrimination because the privilege relates only to testimonial compulsion and not to real evidence. The taking of blood for an alcohol test in a medically approved manner does not constitute brutality nor is the defendant denied due process of law under the rule applied in *Rochin v. California*, 342 U. S. 165, 72 S. Ct. 205.

**People v. Duroncelay**, 48 Cal. 2d 766;

**People v. Lewis**, 152 Cal. App. 2d 824;

**Breithaupt v. Abram**, 77 S. Ct. 408, 352 U. S. 434 (*New Mexico*).

A physical examination of defendant immediately following defendant's arrest for commission of the infamous crime against nature (Pen. Code, § 286) neither constituted a violation of his immunity to self-incrimination nor the making of an unreasonable search and seizure where there was no brutality and where defendant did not object to the examination.

**People v. Morgan**, 146 Cal. App. 2d 722.

After a lawful arrest and during defendant's questioning about a participation in a crime, it is not an illegal search nor offensive to the Constitution to require someone to disrobe for an examination of his clothing and to submit to photographs being taken of his body and its scars.

Officers had evidence of defendant's participation in a burglary where blood was found at the scene of crime and blood was on the clothing of the defendant.

**People v. Smith**, 142 Cal. App. 2d 287.

Police may force a defendant to try on clothing.

**People v. Caritativo**, 46 Cal. 2d 68.

The actions of policemen were not so brutal and shocking that they offended the due process clause of the Constitution when they forced a prisoner, arrested for being under the influence of a narcotic, to submit over protest, to a finger probe of his rectum from which was forcibly ejected a rubber vial containing a gram of a narcotic.

**People v. Woods**, 139 Cal. App. 2d 515.

Defendant may be forced to spit out a narcotic which he has concealed in his mouth.

**People v. Smith**, 50 Cal. 2d 149;

**People v. Dawson**, 127 Cal. App. 2d 375;

**People v. Zamora**, 163 Cal. App. 2d 400;

**People v. Poole**, 174 A. C. A. 55.

But police may only use that degree of force that is reasonably necessary in order to obtain evidence from the possession of the defendant.

**People v. Dixon**, 46 Cal. 2d 456.

*People v. Martinez*, 130 Cal. App. 2d 54 (court held the defendant was deprived of due process of law where a package of heroin was extracted from his mouth after he was choked and wrestled to the ground by arresting officers).

Following his arrest, officers told defendant if he had narcotics secreted on his body, it would be better if he gave it to the officers rather than have it found in jail. Defendant stated he would give it to the officers and withdrew a latex bag containing heroin from his rectum.

Held, the statement of the officers did not constitute duress and where the defendant voluntarily produces evidence against himself, his constitutional rights are not violated.

**People v. Houston**, 164 Cal. App. 2d 396.

Part V

REASONABLENESS OF THE SEARCH

G. Arrest and Search for One Crime Turns Up Evidence Bearing on a Different Crime

Fact that defendant was arrested for one crime does not prevent his prosecution for another crime which the legal search reveals he has committed. Nor does the fact that the officer finds contraband which he did not expect to find, render the search unreasonable. Once evidence is lawfully obtained, the State may use it in the enforcement of any law which may have been violated.

**People v. Lujan**, 141 Cal. App. 2d 143.

Where the officers were rightfully searching the room for evidence connecting the defendant with a car theft there was no reason for ignoring the presence of heroin discovered in the course of the search, and a further search for hypodermic paraphernalia was proper.

**People v. Littlejohn**, 148 Cal. App. 2d 786.

Where police officers were justified, from information previously received and by defendant's furtive action in leaning towards the seat of the car, in believing that the defendants were carrying weapons for a fight and where the search of the car revealed marijuana instead of weapons, the evidence was admissible.

**People v. Jiminez**, 143 Cal. App. 2d 671.

Where police officer investigating a parked car during an early hour seized defendant, who was lying on front seat, had an alcoholic breath and then staggered badly, officer lawfully arrested the defendant for "drunk auto." The officer was then entitled to impound the car and search it and marijuana found in car was admissible in evidence. An officer is not required to close his eyes to contraband merely because it is disconnected with the initial purpose of the search.

**People v. Ortiz**, 147 Cal. App. 2d 248.

Where officers rightfully entered an apartment to render aid to someone in distress, they may seize a radio fitting the description of stolen property.

**People v. Roberts**, 47 Cal. 2d 374.

Where officers arrested defendant in car on traffic warrant, recognized defendant as known burglar, and seized clothing in back seat of car, believing it to be stolen, they had reasonable cause to search car and when further search revealed narcotics, the narcotics were admissible in evidence.

**People v. Wright**, 153 Cal. App. 2d 35.

Where defendant arrested for drunkenness on probable cause, and search of his person revealed narcotics, the search was proper.

**People v. Smith**, 153 Cal. App. 2d 190.

See also,

**People v. Coleman**, 134 Cal. App. 2d 594;

**People v. Morgan**, 146 Cal. App. 2d 722.

Where an officer was justifiably searching a house to find evidence regarding defendant's residence in the house, marijuana found under the bed was admissible in evidence.

**People v. Cahill**, 163 Cal. App. 2d 15.

Defendant went through stop sign at 4 a.m. Officer stopped him and checked the registration slip and at that time saw a pistol under front seat of car. Defendant was arrested on "concealed weapon" charge. Court said that a search of the glove compartment for further weapons was justified, and when marijuana was found it was properly admissible.

**People v. McFarren**, 155 Cal. App. 2d 383.

Where defendant was arrested for practicing medicine without a license, a search for narcotics was related to the offense as circumstantial evidence that defendant was practicing medicine without a license.

**People v. Jablon**, 153 Cal. App. 2d 456.

Where defendant arrested for drunkenness on probable cause, and search of his person revealed narcotics, the search was proper.

**People v. Smith**, 153 Cal. App. 2d 190.

The search must relate to the crime charged and general exploratory searches are unlawful.

**People v. Mills**, 148 Cal. App. 2d 392 (defendant was charged with issuing a particular stock certificate without a permit. Officers searched entire office for other evidence having to do with stock promotion and stock activities).

**People v. Schaumloffel**, 53 A.C. 97 (holding illegal a search of a doctor's office and seizure of confidential records unconnected with offense of abortion with which the doctor was charged).

## Part V

### REASONABLENESS OF THE SEARCH

#### H. Area of Search

##### 1. PREMISES UNDER CONTROL OF DEFENDANT

Where an officer has reasonable grounds for believing that the arrestee has committed a felony, he may search the entire premises under the control of the defendant.

**People v. Guerrero**, 149 Cal. App. 2d 133 (the apartment where defendant was arrested).

Cf.

**Agnello v. United States**, 46 S. Ct. 4, 269 U.S. 20;

**Application of Rose**, 32 Fed. Supp. 103;

**People v. Gorg**, 45 Cal. 2d 776.

The defendant was arrested in her back yard. After lawful arrest, the police could search the premises under her control. This included her bedroom.

**People v. Guy**, 145 Cal. App. 2d 481.

Where defendant was arrested in the entry hall of his apartment, the officers had a right to search the apartment. In making a search incidental to a lawful arrest an officer is not restricted to the area immediately surrounding the defendant at the time he is arrested. The law contemplates a reasonable search of the vicinity.

**People v. Lawrence**, 149 Cal. App. 2d 435.

An officer may make an arrest just outside the front door of the defendant's room, and then enter and search the room as an incident to such arrest. A search of a garage on the premises is also proper.

**Trowbridge v. Superior Court**, 144 Cal. App. 2d 13.

Where defendant was arrested in his back yard on a narcotics charge, it was reasonable to search the apartment, the garage, and the car.

**People v. Smith**, 166 Cal. App. 2d 302.

Where defendant consented to a search of his hotel room, a search of a washstand in the hallway on which his room faced was proper.

**People v. Wasco**, 153 Cal. App. 2d 485.

Under a search warrant naming one person as an occupier of premises, officers could search defendant's bedroom where he shared the apartment with the person named in the warrant.

**People v. Gorg**, 157 Cal. App. 2d 515.

Defendant was arrested with probable cause in the driveway next door to his apartment. The court said that the search of the apartment was a reasonable search of the premises under his control.

**People v. Cisneros**, 166 Cal. App. 2d 100.



## REASONABLENESS OF THE SEARCH

## H. Area of Search

**2. DEFENDANT ARRESTED AWAY FROM HIS HOUSE**

(See also IV-D-3, Defendant Arrested Away From Vehicle.)

An officer cannot arrest a man in one place and then search his dwelling, in a place distant from where arrest was made, as an incident to the arrest.

Where the defendant is arrested at his home, the officers may not search the defendant's *office* as an incident to the arrest. See *Silverthorne Lumber Co., Inc. v. United States*, 40 S. Ct. 182, 251 U. S. 385.

Where the arrest of the defendant takes place in the *immediate* vicinity of the structure searched, the search has been upheld as reasonably incident to the arrest.

In *Shew v. United States*, 155 Fed. 2d 628, defendant was arrested near his smokehouse. Search of the smokehouse was proper.

The accused must be arrested in the immediate vicinity of the place searched. See *United States v. Coffman*, 50 Fed. Supp. 823, where the defendant was arrested in a field about one-quarter mile from his dwelling house. The officers took the defendant to the house and searched the premises. The search was held to be improper.

"T" was arrested while attempting to enter his automobile. After he was arrested a bystander advised the officers that "T" lived in the adjacent apartment. The officers went to the apartment and entered without invitation and they found "D." They had no knowledge concerning "D." They searched the apartment and found narcotics. Held: The search of the apartment was not a proper incident to the lawful arrest of "T." His arrest was on a public street, not upon any part of the premises in which the apartment was situated.

**Hernandez v. Superior Court**, 143 Cal. App. 2d 20.

But compare

Where officers have probable cause to believe defendant guilty of possessing and selling narcotics and where defendant is arrested outside his house, where he drives up to the house in his car, a search of the house is proper as incident to a lawful arrest.

**People v. Montes**, 146 Cal. App. 2d 530.

Officers had probable cause to arrest defendant in an automobile parked out in front of a house, where reliable confidential informer had told police officers that narcotics were being distributed from the house. The search of the house was lawful. (Note: Although there was evidence of consent to search, the court did not discuss consent.)

**People v. Alaniz**, 149 Cal. App. 2d 560.



Where defendant was arrested on a narcotics charge as he walked out of the house, it was proper for officers to search the premises where he reportedly kept his supply and from which defendant had just emerged.

**People v. Velis**, 172 A. C. A. 577.

In the case of *Agnello v. United States*, 46 S. Ct. 4, 269 U. S. 20, federal agents acted upon information received from informants and went to defendant Alba's house and arrested Alba and Agnello whom they found there. The officers then went to Agnello's house which was several blocks away from the scene of the arrest, and made a search of his house without a search warrant and in the absence of Agnello. The officers found a can of cocaine in Agnello's house. The court determined that the search of Agnello's house was unreasonable, as it was not incidental to his arrest.

And see cases in V-H-1.

REASONABLENESS OF THE SEARCH

H. Area of Search

**3. OPEN FIELDS AND WOODS**

An open field may be searched without a warrant. It has been held that the security of persons, houses, papers and effects afforded by the Constitution does not extend to open fields and woods, and search and seizure may be made in such a place without a warrant.

**Hester v. U. S.**, *44 S. Ct. 445*, *265 U. S. 57*.

Defendant arrested at his house. Twenty feet from the house a vial of marijuana was found. Held: Search of the area twenty feet from the house was lawful. Entry and search of field or driveway is not forbidden by Fourth Amendment.

**People v. Montes**, *146 Cal. App. 2d 530*.

Where officers recovered a bindle which had been thrown into someone's back yard, there was no evidence of an unlawful search and seizure.

**People v. Lawton**, *150 Cal. App. 2d 431*.



Part V

REASONABLENESS OF THE SEARCH

I. Duration of Search

Where articles observed in defendant's residence by an officer lawfully on the premises were related to the crime charged and the officer could have taken those articles when he took defendant to jail, the fact that he went back to the premises later and retrieved them, did not constitute illegal search.

**People v. Stewart**, 144 Cal. App. 2d 555.

Officers arrested defendant, searched the house and found marijuana. The next day a further search of the house was made.

If search is authorized an officer may continue reasonably to explore every avenue that may lead to a discovery of the contraband article. Thus the search of the house the following day was lawful.

**People v. Montes**, 146 Cal. App. 2d 530.

The search of an apartment for five hours was held reasonable in *Harris v. United States*, 67 S. Ct. 1098, 331 U. S. 145.

Approximately one month after defendant's arrest for forgery, written consent was obtained from defendant to search his residence and his automobile. Nothing was found in the automobile that day, but one week later the car, which then was in a police parking lot was searched again, and revealed a stamp used in the forgery. Held, the subsequent search was lawful.

**People v. Hickens**, 165 Cal. App. 2d 364.



Part V

REASONABLENESS OF THE SEARCH

J. Search Cannot Be Justified by What It Turns Up

A search incident to an arrest cannot be justified, in the absence of reasonable cause under Penal Code Section 836, merely because it revealed that the defendant was in fact guilty of felony.

**People v. Brown**, 45 Cal. 2d 640;  
**People v. Boyles**, 45 Cal. 2d 652;  
**People v. Thymiakas**, 140 Cal. App. 2d 940;  
**People v. Yet Ning Yee**, 145 Cal. App. 2d 513;  
**People v. Harvey**, 142 Cal. App. 2d 728;  
**People v. Harris**, 146 Cal. App. 2d 142;  
**People v. Schraier**, 141 Cal. App. 2d 600;  
**People v. Simon**, 45 Cal. 2d 645;  
**People v. Harvey**, 156 Cal. App. 2d. 516;  
**People v. Gorg**, 157 Cal. App. 2d 515.



Part VI

INFORMING ARRESTEE OF ARREST—PENAL CODE § 841

A. General Rule

Section 841 of the California Penal Code designates how an arrest is made. This section reads as follows:

“The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person making the arrest has reasonable cause to believe that the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or the person to be arrested is pursued immediately after its commission, or after an escape.”

A failure to literally comply with Penal Code Section 841 will not render evidence seized inadmissible.

**People v. Rios**, 46 Cal. 2d 297;

**People v. Maddox**, 46 Cal. 2d 301.

If the officer has reasonable cause to make an arrest a violation of Penal Code Section 841 would be unrelated and collateral to the securing of evidence by a search incident to the arrest, for what the search turns up will in no way depend on whether the officer informed “the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it.”

**People v. Maddox**, 46 Cal. 2d 301, 305;

**People v. Romero**, 156 Cal. App. 2d 48.





INFORMING ARRESTEE OF ARREST—PENAL CODE § 841

B. Where Arrestee Committing Crime

Where the defendant is arrested while engaged in the commission of a crime under Penal Code Section 841, the arresting officer need not inform him of the intention to make an arrest, the cause of the arrest, and the authority to make it.

**People v. Beard**, 46 Cal. 2d 278;

**People v. Rios**, 46 Cal. 2d 297;

**People v. Jaurequi**, 142 Cal. App. 2d 555;

**People v. Thomas**, 156 Cal. App. 2d 117;

**People v. Herman**, 163 Cal. App. 2d 821.



INFORMING ARRESTEE OF ARREST—PENAL CODE § 841

C. Where Arrestee Has Implied Knowledge

Where it is reasonably apparent from the defendant's conduct at the time of the arrest that he knew that the person making the arrest was an officer, then it is immaterial whether or not the officers literally complied with Penal Code Section 841.

**Willson v. Superior Court**, 46 Cal. 2d 291;

**People v. Rios**, 46 Cal. 2d 297.

An officer does not have to notify the accused of his official capacity before making an arrest, when it is known to the accused or when by the exercise of ordinary reason the accused should know it, as where the officers are in a distinctive uniform, with their badges displayed. Likewise, notice of intention to make an arrest may be indicated from the circumstances. It is not necessary that notice of such intention be given by express statement before taking the person into custody.

**Allen v. McCoy**, 135 Cal. App. 500, 509;

**Willson v. Superior Court**, 46 Cal. 2d 291;

**People v. Valenzuela**, 171 A.C.A. 362.



REQUEST FOR ADMITTANCE AND FORCIBLE ENTRY—  
PENAL CODE § 844

A. General Rule

Penal Code Section 844 provides:

"To make an arrest, a private person, if the offense be a felony, and in all cases a peace-officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired."

A literal compliance with Penal Code Section 844 is excused where an arresting officer in good faith believes that delay would permit the destruction or secretion of evidence, put the officer in peril of an attack by the arrestee, and/or permit the arrestee to escape.

**People v. Maddox**, 46 Cal. 2d 301, 306.

Where officers have probable cause to arrest defendant for bookmaking and knew that defendant was occupying a certain apartment and where the officers knocked on the door, identifying themselves and told the person inside he was under arrest, and where there was no response, the officers had reasonable grounds for forcible entry.

**People v. Miller**, 143 Cal. App. 2d 558, 561;

**People v. Carswell**, 51 Cal. 2d 602, 607 (forcible entry is justified after knocking on door and receiving no response when the officers have reasonable grounds to assume defendant would be in his room);

**People v. Ferrera**, 149 Cal. App. 2d 850, 856 (where in addition to the above circumstances there was a sound as if someone were running away);

**People v. Hudak**, 149 Cal. App. 2d 88, 92 (where officers were refused entry after proper demand);

**People v. Preston**, 160 Cal. App. 2d 545, 550.



**Part VII**

**REQUEST FOR ADMITTANCE AND FORCIBLE ENTRY—  
PENAL CODE § 844**

**B. Excuses for Failure to Comply**

**1. UNRELATED TO SECURING EVIDENCE**

In *People v. Martin*, 45 Cal. 2d 755, the officer opened a window and requested admittance for the purpose of making an arrest. When admittance was refused he climbed through the window. Although he had reasonable cause to enter and make an arrest, the defendant contended that he violated Section 844 of the Penal Code by opening the window before admittance was refused. The court held, however, that even if his conduct in this regard was illegal, it was unrelated to the securing of the evidence and that therefore the exclusionary rule was inapplicable.





**Part VII**

**REQUEST FOR ADMITTANCE AND FORCIBLE ENTRY—  
PENAL CODE § 844**

**B. Excuses for Failure to Comply**

**2. NECESSITY TO USE CAUTION**

Where the officer knew prior to the entry that the defendant had committed an armed robbery, and had suffered prior convictions for robbery, the necessity for the exercise of caution was a sufficient reason to justify a failure to comply with Penal Code Section 844.

**People v. Potter**, 144 Cal. App. 2d 350, 356.

Compliance is not required if the officer's peril would have been increased or the arrest frustrated, had he demanded entrance and stated his purpose. When he has reasonable grounds to believe a felony is being committed and hears retreating footsteps, the conclusion that his peril would be increased or that the felon would escape, if he demanded entrance and explained his purpose, is not unreasonable.

**People v. Maddox**, 46 Cal. 2d 301, 306;

**People v. King**, 140 Cal. App. 2d 1, 9.



**Part VII**  
**REQUEST FOR ADMITTANCE AND FORCIBLE ENTRY—**  
**PENAL CODE § 844**

**B. Excuses for Failure to Comply**

**3. PREVENT DESTRUCTION OF EVIDENCE**

Compliance with Penal Code Section 844 is excused where notice to defendant of the officer's presence would result in a destruction of the evidence. Officers were justified in forcing entry without demanding admittance and being refused, in the following cases:

*Narcotics cases*

**People v. Moore**, 140 Cal. App. 2d 870, 873;

**People v. Ruiz**, 146 Cal. App. 2d 630, 634;

**People v. Sayles**, 140 Cal. App. 2d 657, 660 (noting it is common for defendants to flush narcotics down the toilet to dispose of them quickly);

**People v. Guerrero**, 149 Cal. App. 2d 133 (no response where officers pounded on the door, announced their presence, and heard sounds coming from within indicating activity);

**People v. Barnett**, 156 Cal. App. 2d 803, 807;

**People v. Morris**, 157 Cal. App. 2d 81, 84;

**People v. Rollins**, 161 Cal. App. 2d 560, 563 (defendant ran toward bathroom).

**People v. Williams**, 175 A.C.A. 821 (when officers knocked on door, they heard swift movement toward bathroom).

*Bookmaking cases*

**People v. Steinberg**, 148 Cal. App. 2d 855, 860 (officers had been warned defendant would attempt to destroy evidence);

**People v. Shelton**, 151 Cal. App. 2d 587, 588 (officers rang door bell and received no answer.



**Part VIII**

**DEFENDANT MAY RELY ON RIGHTS OF OTHERS**

The defendant may object to the use of evidence obtained by means of an unreasonable search and seizure of a home of a third person, even though the defendant's rights were not violated, and even though the defendant disclaims any interest in the premises searched and in the property seized.

**People v. Martin**, 45 Cal. 2d 755, 759;

**People v. Colonna**, 140 Cal. App. 2d 705, 709;

**People v. Silva**, 140 Cal. App. 2d 791, 794;

**People v. Jager**, 145 Cal. App. 2d 792, 799 (illegal entry into place of business of *victim* to record attempted robbery);

**People v. Gale**, 46 Cal. 2d 253, 257 (search of car).



## Part IX

### STATEMENTS MADE DURING ILLEGAL DETENTION

The exclusionary rule does not apply to confessions or admissions obtained during a period of illegal detention under Penal Code Section 825. The illegal detention is only one factor in determining whether the statement is voluntary.

In *Rogers v. Superior Court*, 46 Cal. 2d 3, 11, the officers illegally detained the defendant for eight days before taking him before a magistrate. During this period defendant voluntarily admitted his participation in the crime charged. It was held that his admission could be used as evidence against him on the ground it was not the product of the illegal detention but the voluntary act of the defendant.

The fact that defendant may have been illegally detained and not properly taken before a magistrate does not render defendant's statements voluntarily made after the arrest inadmissible.

**People v. Allen**, 142 Cal. App. 2d 267, 286;

**People v. Clemmons**, 153 Cal. App. 2d 64, 67;

**People v. Hazelip**, 166 Cal. App. 2d 240, 246;

**People v. Vaughn**, 155 Cal. App. 2d 596, 600;

**People v. Stice**, 161 Cal. App. 2d 610, 613;

**People v. Bashor**, 48 Cal. 2d 763, 765;

**McAllister v. Superior Court**, 165 Cal. App. 2d 297, 301;

**People v. Hicks**, 165 Cal. App. 2d 548, 550;

**People v. Grace**, 166 Cal. App. 2d 68. (Court said that they did not condone the practice of delay in arraigning defendants and suggests that under Penal Code § 145 the officers may be guilty of a misdemeanor for their delay. The court said that adoption of the federal rule (illegal detention grounds for excluding confession obtained during such detention) would seem the only possible way of stopping the illegal practices of the police.)





## Part X

### TECHNICAL VIOLATIONS UNRELATED TO SECURING EVIDENCE

Where the officer, in making a search and acting in good faith, commits a technical violation of the law which is unrelated and collateral to the securing of the evidence to which the defendant objects, the evidence will not be excluded. A trespass unrelated to the securing of evidence cannot render evidence secured at a later time inadmissible.

**People v. Boyles**, 45 Cal. 2d 652, 654.

Unlawful activity which does not produce the evidence sought to be suppressed and which is entirely unrelated and collateral to the securing of such evidence affords no basis for applying a rule of exclusion.

**People v. McCarty**, 164 Cal. App. 2d 322, 329 (where it was contended unsuccessfully that the officer's conduct in taking the defendant before a magistrate in a county other than that in which the arrest was made, was unlawful. Even assuming this to be true, it would not render the antecedent arrest or search unlawful).



**Part XI**

**TESTIMONY RELATING TO PROBABLE CAUSE IS NOT HEARSAY**

In a bookmaking case, statements made to a police officer by confidential informant are admissible to show probable cause. It is not hearsay since it is not offered to prove the truth of the matter asserted.

**People v. King**, 140 Cal. App. 2d 1, 5.

Reasonable cause to justify an arrest is not limited to evidence which would be admissible at the trial on the issue of guilt.

**People v. Jauregui**, 142 Cal. App. 2d 555, 559;

**Trowbridge v. Superior Court**, 144 Cal. App. 2d 13, 17.



**Part XI**

**TESTIMONY RELATING TO PROBABLE CAUSE IS NOT HEARSAY**

**A. Must Testify to Details of Information**

Officer must testify to the information known which is the basis of the conclusion that reasonable cause existed. The officer cannot merely testify that there was "reasonable cause."

**People v. Boyles**, 45 Cal. 2d 652, 656;

**People v. Burke**, 47 Cal. 2d 45, 48;

**People v. Thymiakas**, 140 Cal. App. 2d 940, 943.



OBJECTION MUST BE MADE AT TRIAL TO RAISE ON APPEAL

Objection to introduction of illegally obtained evidence must be made at trial:

- People v. Shannon**, 147 Cal. App. 2d 300, 303;
- People v. Mann**, 148 Cal. App. 2d 851, 854;
- People v. Kelsey**, 140 Cal. App. 2d 722, 723;
- People v. Williams**, 148 Cal. App. 2d 525, 532;
- People v. Van Randall**, 140 Cal. App. 2d 771, 776;
- People v. Brittain**, 149 Cal. App. 2d 201, 203;
- People v. Alvidrez**, 148 Cal. App. 2d 299, 300, 301;
- People v. Woo Mee Foo**, 159 Cal. App. 2d 429, 432;
- People v. Richardson**, 51 Cal. 2d 445, 447;
- People v. Martinez**, 169 Cal. App. 2d 242, 246;
- People v. Jaquish**, 170 Cal. App. 2d 376, 378;
- People v. Blankenship**, 171 A.C.A. 64, 79.
- People v. One 1956 Porsche Convertible**, 175 A.C.A. 277, 281-282.

The admissibility of evidence will not be reviewed on appeal in the absence of proper objection in the trial court but this rule is not applicable to appeals based on the admission of illegally obtained evidence in cases which were tried before the Cahan decision (44 Cal. 2d 434).

- People v. Kitchens**, 46 Cal. 2d 260, 262;
- People v. Maddox**, 46 Cal. 2d 301, 304;
- People v. Jager**, 145 Cal. App. 2d 792, 797;
- People v. Cisneros**, 166 Cal. App. 2d 100, 102;
- People v. Hyde**, 51 Cal. 2d 152, 157.

But in *People v. Dixon*, 46 Cal. 2d 456, 458, the Supreme Court said: "It follows however, from the officers' own testimony that they had no warrant and from the absence of any evidence to justify their entry, arrest and search, that the evidence should have been excluded because it was illegally obtained." No objection was made at the trial.

At the preliminary examination, defendant made no objection to the introduction of a marijuana cigarette, thereby waiving his right to claim that such evidence was improperly received and the committing magistrate properly considered it in determining whether there was sufficient cause to believe that the accused had committed a public offense.

**People v. Spicer**, 163 Cal. App. 2d 678, 683.

Defendant cannot object to the admission of illegally procured evidence when defendant himself stipulated that the court examine a record which disclosed reasonable grounds for the officer's conclusion.

- People v. Malone**, 173 A.C.A. 269, 278;
- People v. Daley**, 172 A.C.A. 386.



If defendant objects to establishing probable cause, and fails to cross-examine on that issue, he may not, on appeal, challenge the failure of the record to establish the basis for the officer's belief.

**People v. Arter**, 169 Cal. App. 2d 439.

For cases, holding that defendant must request the identity of the informer at the trial in order to raise on appeal, see IV-C-3-d.

*Motion to Strike*

If a proper objection was made to the introduction of evidence, a subsequent motion to strike the officer's testimony is not necessary in order to raise on appeal the issue of probable cause and revealing the identity of the informer.

**People v. Robinson**, 166 Cal. App. 2d 416, 423.

But contrast *People v. Smith*, 171 A.C.A. 616, holding that defendant must move to strike the officer's testimony if the prosecution refuses to disclose the name of an informer who provided the probable cause. Defendant objected to the introduction of the heroin on the ground that the identity of the informer should have been disclosed, and asserted that he thought the informer was one "T," but he did not assert that the arrest was illegal or that by reason of the failure to identify the informer he was deprived of the opportunity of obtaining the informer as a witness. Where record silent as to whether officer had a search warrant, even though defendant objects to the reception of the evidence at the trial, the arrest and search must be presumed legal.

**People v. Smith**, 171 A.C.A. 616.

## Part XII

### OBJECTION MUST BE MADE AT TRIAL TO RAISE ON APPEAL

#### A. Preliminary Motions in Advance of Trial

Preliminary motion to suppress illegally obtained evidence need not be made in advance of trial because it would result in delaying the criminal trial, while the motion was being determined.

**People v. Berger**, 44 Cal. 2d 459, 464.

A preliminary motion of this kind was required by the United States Supreme Court in *Weeks v. United States*, 34 S. Ct. 341, 232 U. S. 383, but in recent years the Federal Courts have modified the requirements by allowing the trial court to entertain the motion for the first time at the trial.

**Federal Rules, Criminal Procedure, Rule 41-E;**

**Panzich v. United States**, 285 Fed. 871, 872.

But if illegally obtained evidence is the sole basis of an indictment or information, defendant is held without probable cause, and his motion to set aside the accusatory pleading should be granted by the court in which he is arraigned on such pleading.

**People v. Valenti**, 49 Cal. 2d 199, 203;

**People v. Prewitt**, 52 A.C. 342, 347 (if motion is improperly denied the appellate court will grant prohibition).

The information should not be set aside under Penal Code Section 995 on the ground that essential evidence was illegally obtained if there is any substantial evidence or applicable presumption to support a contrary conclusion.

**People v. Evans**, 175 A.C.A. 304, 306;

**Badillo v. Superior Court**, 46 Cal. 2d 269, 272.

A proper objection was not made where no objection was made at the preliminary examination and at the trial there was a motion to suppress but the grounds were that the arrest had occurred at a distance from the dwelling and that the information received by the police was ambiguous.

**People v. Pettyjohn**, 172 A.C.A. 214, 221-222.

#### *Indictment*

If the prosecution is by indictment, defendant has no opportunity to object to the introduction of evidence before the grand jury, and there can be no waiver of the right to challenge the legality of the evidence to support the indictment based on a failure to object to its introduction.

**People v. Prewitt**, 52 A.C. 342, 347.

#### *Information*

If the evidence before the magistrate is in conflict, the information should not be set aside on the ground that essential evidence was il-

legally obtained if there is any substantial evidence or applicable presumption to support a contrary conclusion.

If the defendant seeks to have evidence excluded as a basis for holding him to answer, he must object to the introduction before the magistrate. But if no objection is made at the preliminary, the decision on admissibility can be made at the trial.

**People v. Prewitt**, 52 *A.C.* 342, 346-347.

Part XII

OBJECTION MUST BE MADE AT TRIAL TO RAISE ON APPEAL

B. Writ of Prohibition to Review Ruling on Admissibility of Evidence

Generally, a writ of prohibition cannot be used to review rulings on admissibility of evidence at a preliminary examination, but where a defendant has been held to answer without probable cause and if his commitment is based entirely on incompetent evidence the peremptory writ will issue and is the appropriate means to test the court's jurisdiction when the validity of the commitment is challenged on the ground that defendant has been committed without reasonable cause.

**Rogers v. Superior Court**, *46 Cal. 2d 3, 6-7*;

**People v. Valenti**, *49 Cal. 2d 199, 203*.

At preliminary examination defendant failed to object to introduction of marijuana cigarette which was found in his car. Held, he waived his right to object at a motion to dismiss under § 995.

**People v. McFarren**, *155 Cal. App. 2d 383, 383-384*.



**Part XIII**

**TESTIMONY RELATING TO EVIDENCE UNLAWFULLY  
SEIZED IS INADMISSIBLE**

Photostats made from documents unlawfully seized are tainted by the illegal search and seizure and are not admissible in evidence.

**People v. Berger**, 44 *Cal. 2d* 459, 462.

Testimony of a defendant which is impelled by the erroneous admission of illegally obtained evidence cannot be segregated from such evidence to sustain a judgment.

**People v. Mills**, 148 *Cal. App. 2d* 392, 408;

**People v. Dixon**, 46 *Cal. 2d* 456, 458.



## Part XIV

### EVIDENCE SEIZED BY PRIVATE PERSON

Evidence seized by a private person acting in a private capacity will not be excluded, but if that private person is employed by the District Attorney or police and works under their direct supervision, he is a public officer and evidence obtained illegally will be excluded. (Illegally obtained recordings from microphone installed in defendant's room by engineer working with police and paid by public funds.)

**People v. Tarantino**, 45 Cal. 2d 590, 595.

An employer searched his employee's car unlawfully, and found property which had been stolen from the employer's stores. The evidence was admissible because the exclusionary rule adopted in *People v. Cahan* (44 Cal. 2d 434), does not apply to evidence obtained by a private person who is not employed by or associated with a governmental unit.

**People v. Johnson**, 153 Cal. App. 2d 870, 873.

But see

A judgment of conviction was reversed because the California Supreme Court found on the basis of uncontradicted evidence that defendant's confessions were involuntary, where defendant prior to his confession had been kidnapped by his victim's husband, beaten and threatened. The court said that it made no difference that the coercion in this case was inflicted by civilians and not the police.

**People v. Berve**, 51 Cal. 2d 286, 293.





## DISCOVERY

Disclosure of matters which are material and substantial to preparation of an adequate defense may be compelled in advance of trial.

**A. What May Be Discovered****1. STATEMENTS BY DEFENDANT**

*Cordry v. Superior Court*, 161 Cal. App. 2d 267, 268-269 (mandate issued to compel court to issue an order for inspection of the written records of all statements made by defendant to law enforcement officers).

Defendant has the right before trial to inspection of a written statement made by him to police officers immediately after arrest, where defendant claimed that he was unable to recall what he said in this statement. He is entitled to see the statement even though it consists of the "notes" of the interrogator and there was no showing that the statements were reduced to writing.

**McCarthy v. Superior Court**, 162 Cal. App. 2d 755, 759-760.

Defendant wanted to inspect signed statement and typewritten transcript of the tape recording which he had made in the office of the police chief, on the ground that he could not remember what he said. Court held he was entitled to these documents.

**Powell v. Superior Court**, 48 Cal. 2d 704, 707-708.

**Cash v. Superior Court**, 53 A.C. 73.

Trial court properly exercised its discretion in not permitting inspection of other party's statements where wife, jointly charged with husband, with murder of a child, alleged that she believed her husband had made certain statements to the district attorney implicating her, and where husband, similarly alleged his wife had made statements. Court said that the statements made by the husband outside the presence of the wife would be inadmissible hearsay, and the same with the wife's statements.

Court held on the other hand that each was entitled to see his own statement, and medical specimens obtained from the body of the decedent.

**Schindler v. Superior Court**, 161 Cal. App. 2d 513, 517-519.

A writ of mandate was issued requiring district attorney to permit defendant to inspect, wire recordings of his conversation with police officers, and conversations between an alleged victim and the officers (which was played to defendant at the time he was examined). Defendant alleged that he had forgotten what was said and that the conversations are necessary to prepare for his defense.

**Vance v. Superior Court**, 51 Cal. 2d 92, 93.

Defendant charged with burglary was interrogated and a tape recording was made without his knowledge. The existence of the tape

recording was brought to light on cross-examination of the officer. Defense counsel demanded the production of the record and submitted an affidavit that defendant was not able to remember all of the material covered by the interrogation. The trial judge read the transcript of the tape recording and said that there was nothing which would help the defendant. But the transcripts were not part of the record on appeal. Held, the defendant was entitled to inspect the transcript of the tape recording.

**McAllister v. Superior Court**, 165 Cal. App. 2d 297, 300.

Part XV  
DISCOVERY

A. What May Be Discovered

**2. STATEMENTS BY WITNESS**

Defendant had a right to see statements made by juveniles to the officers in order to determine whether they might be impeaching, since the establishment of probable cause depended almost exclusively on the testimony of the juveniles.

**Tupper v. Superior Court**, 51 Cal. 2d 263, 264-265. (California Supreme Court held that prohibition would not lie to review a ruling of the magistrate on the admissibility of evidence at the preliminary hearing unless the commitment was based entirely on incompetent evidence and it will not be presumed that the superior court will erroneously deny defendant the opportunity to see the witnesses' statements at the time of trial, or on proper motion before trial.)

Trial court properly exercised its discretion in not permitting inspection of other party's statements where wife, jointly charged with husband, with murder of a child, alleged that she believed her husband had made certain statements to the district attorney implicating her, and where husband, similarly alleged his wife had made statements. Court said that the statements made by the husband outside the presence of the wife would be inadmissible hearsay, and the same with the wife's statements.

**Schindler v. Superior Court**, 161 Cal. App. 2d 513, 517-519.

A writ of mandate was issued requiring district attorney to permit defendant to inspect wire recordings of his conversation with police officers, and conversations between an alleged victim and the officers (which was played to defendant at the time he was examined). Defendant alleged that he had forgotten what was said and that the conversations were necessary to prepare for his defense.

**Vance v. Superior Court**, 51 Cal. 2d 92, 93.

In prosecution for sex crimes, judgments of convictions were reversed because the trial court erred in refusing to compel the production of a statement prepared by the police and signed by a prosecuting witness, where defendant sought to obtain this statement for impeachment purposes, after the witness, on cross-examination, said that the statement related to matters covered by her testimony.

**People v. Chapman**, 52 Cal. 2d 94, 98.

An accused is entitled to hear recordings of his conversations with police officers where he has filed a written motion to inspect with an affidavit stating he had forgotten what he said at the time he was examined and alleged that the recordings were necessary to refresh his recollection. The court further held it was error and a denial of

due process to refuse to mark for identification transcripts of the recordings which defendant sought to have introduced into evidence. The judge had the transcripts before him.

**People v. Cartier**, 51 Cal. 2d 590, 594-600.

Defendant was entitled to a writ of mandate to compel production of statements of witnesses where, at the preliminary hearing, two abortion victims who had previously given oral statements to police officers, testified. The statements had been recorded by stenotype.

**Funk v. Superior Court**, 52 Cal. 2d 436, 437-438.

*Police Reports.*

*People v. Silberstein*, 159 Cal. App. 2d Supp. 848, 850, holding that defendant had a right to inspect police report where police officer testified that he had refreshed his memory from his report just before taking stand.

**Part XV**  
**DISCOVERY**

**A. What May Be Discovered**

**3. NAMES OF WITNESSES**

**Castiel v. Superior Court**, 162 Cal. App. 2d 710, 711 (revealing name of confidential informant).

**DeLosa v. Superior Court**, 166 Cal. App. 2d 1, 2-3.



**Part XV**  
**DISCOVERY**

**A. What May Be Discovered**

**4. PHYSICAL EVIDENCE**

**Walker v. Superior Court**, 155 Cal. App. 2d 134, 138-139 (autopsy report and laboratory analysis).

**Schindler v. Superior Court**, 161 Cal. App. 513, 519-520 (medical specimen obtained from body of decedent).





**Part XV**  
**DISCOVERY**

**B. Stage of the Proceedings**

**1. BEFORE TRIAL**

Recordings of prior statements of a witness who testified at the preliminary hearing may be obtained before trial.

**Funk v. Superior Court**, 52 A.C. 436, 437-438;

**Tupper v. Superior Court**, 51 Cal. 2d 263, 264-265.

An accused has the right before trial to obtain written statements made by him to police officers.

**Powell v. Superior Court**, 48 Cal. 2d 704, 707-708;

**Vance v. Superior Court**, 51 Cal. 2d 92, 93.

Mandate issued to compel the Superior Court to issue an order permitting defendant charged with attempted burglary to inspect and copy any recordings or transcriptions of conversations between him and a police officer who had posed as a prospective accomplice. The motion was made after the officer had testified at the preliminary hearing but before trial. Defendant alleged in an affidavit that he could not remember what was said.

**Cash v. Superior Court**, 53 A.C. 73.



**Part XV**  
**DISCOVERY**

**B. Stage of the Proceedings**

**2. DURING TRIAL**

During trial an accused can compel People to produce written statements of prosecution witnesses related to matters covered in their testimony.

**People v. Chapman**, 52 A.C. 94, 97;  
**People v. Riser**, 47 Cal. 2d 566, 585-588.



**Part XV**  
**DISCOVERY**

**C. Foundation**

Generally the defendant must show by affidavit that the documents or objects sought to be produced are relevant and material to the defense. In order to obtain production of the prior statement of a prosecution witness, he is not required to show that there is an inconsistency between the statement and the testimony of the witness.

**People v. Chapman**, 52 A.C. 94, 98 (disapproving implications in *People v. Gallardo*, 41 Cal. 2d 57, 67, and *People v. Riser*, 47 Cal. 2d 566, 587, to the contrary).

In laying a foundation for the production of previously recorded statements of witnesses who had testified at the preliminary, defendant was not required to show that the statements prepared by the police had been signed or otherwise acknowledged by the witnesses as an accurate transcription.

**Funk v. Superior Court**, 52 A.C. 436, 438 (disapproving *People v. Glaze*, 139 Cal. 154, 157-158; and *People v. Kostal*, 159 Cal. App. 2d 444, 449-450, insofar as those cases were to the contrary).

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